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FEDERAL ORGANIZATION OF LEGAL FUNCTIONS

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Varied tasks throughout the vast field of activities of the executive branch of the federal government can be performed only by persons with training in one of more branches of law. The tasks run all the way from the administration of locally established rules and regulations of the several government agencies to the argument of fundamentally important constitutional questions before the Supreme Court. Down through the years of American history there has been conflict of opinion as to the proper mode of organizing the legal work of the government. It is contended, on the one hand, that functions of a highly specialized and highly professionalized character such as those of law ought, in the interest of symmetry and efficiency, to be integrated under centralized management. To a limited extent, such integration has been brought about in the Department of Justice. On the other hand, it is contended that the work of lawyers merely aids in the performance of more fundamental classifications of work done by the government, and that organization should be in terms of such topics as finance, foreign affairs, commerce, agriculture, and labor, with legal tasks grouped in subordinate categories and subject to control only by the respective heads of the major organizations. In line with this contention, all major departments and most other agencies have staffs of lawyers not directly connected with the Department of Justice.

No theorist has ever been able to work out a universally acceptable classification of governmental functions in mutually exclusive categories. In connection with an attempt at reorganization of executive agencies in 1932, the director of the Bureau of the Budget made the following statement: "We found, in studying the situation and hearing various groups of interested parties who came in to talk the thing over, that there was no such thing as a logical grouping by major functions. It depends upon your point of view. Each man who is interested in a particular line of activity feels that in a logical grouping of major functions everything touching his activities should be grouped together, but, as most of the activities touch more than one major function, one cannot do that unless he puts everything in one pot."[1]

The statement applies as well to the classification of legal functions as to those of other kinds. Yet the series of jurisdictional struggles which have taken place from time to time have worked toward the adoption of a principle, namely, that government litigation should be centrally managed by the Department of Justice, while the mass of internal legal work in the several agencies should be left to the control of the agencies themselves. With respect to the control of litigation, the principle is not yet fully established. The Department of Justice asserts the desirability of centralized control, to bring about uniformity in approach to constitutional and other legal questions raised in the courts. Attention may also be called to damaging mistakes made in times past by counsel for other and less disciplined agencies in the handling of cases. On the other hand, it is freely contended that some types of cases can be presented properly only by counsel having broad familiarity with the special fields of activity of particular agencies—a familiarity which Department of Justice attorneys ordinarily do not achieve.

Significant struggles over the issue, which is one of concern to the public as well as to attorneys whose positions and activities are affected, have taken place during the present decade, and go on almost continuously in one field or another. The following pages summarize the history of past struggles over the broad field of legal work in the government, tell the story of hitherto unreported conflicts over the control of New Deal litigation and of the recent enactment of legislation tending to break down centralized control, and analyze the present organization of the legal functions of the government.

I

The division of authority over legal matters began in 1789, when Congress provided for district attorneys in the several districts,[2] but gave the Attorney-General no power of direction over them. The several occupants of the position of Attorney-General made thereafter numerous recommendations that the district attorneys be brought under their jurisdiction, but no changes were made until a number of decades had passed. In the meantime, in 1830, Congress began a further decentralization of control over legal matters by creating in the Treasury Department the position of Solicitor of the Treasury. The Attorney-General was under obligation to assist this officer, but had no authority over him. Other like or similar positions were subsequently created.[3] By the beginning of 1870, when the establishment of a Department of Justice was being considered, there were six officers in executive departments acting as department solicitors or in approximately equivalent capacities.[4] These officers and the special counsel who were employed along with them were responsible to their respective department heads, but not to the Attorney-General. The result was conflict between them and the Attorney-General in matters of legal interpretation, and lack of consistent policy in handling litigation.

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[1] *President's Message on Consolidation of Government Agencies*, Hearings on the President's Message, Dec. 9, 1932, House Committee on Expenditures in the Execu-

By the act of June 22, 1870,[5] Congress attempted to incorporate in a Department of Justice all the legal functions of the government. The act provided that the solicitors of the other departments, with their staffs, should be transferred to the Department of Justice.[6] The Attorney-General was given supervision over the district attorneys, and he and his staff were given control of government litigation in all courts. Heads of the departments were forbidden to employ special counsel except under most restricted circumstances.

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tive Departments, 72d Cong., 2d sess., pp. 1–2. See also Charles S. Hyneman, "Administrative Reorganization," *Journal of Politics*, Feb., 1939.

[2] 1 Stat. 92.

[3] For an account of developments from 1789 to 1870, see Homer Cummings and Carl McFarland, *Federal Justice* (1937), pp. 142 ff., 188 ff., 218 ff.; Albert Langeluttig, *The Department of Justice* (1927), pp. 1–121. Cf. Sewall Key, "The Legal Work of the Federal Government," *Virginia Law Review*, Dec. 1938.

[4] The positions were: Solicitor of the Treasury, Solicitor of Internal Revenue, Judge Advocate General of the Army, Solicitor and Naval Judge Advocate General for the Navy, Auditor for the Post Office Department, and the Examiner of Claims in the State Department. *Annual Report of the Attorney-General*, 1909, p. 6.

[5] 16 Stat. 162.

[6] The Post Office auditor was not transferred, but certain legal duties conferred upon him were transferred. Likewise the Judge Advocate General of the Army was not transferred, but certain duties not connected directly with military law were taken from him.

The effect of the act was not as sweeping as Congress seems to have intended. The solicitors nominally transferred were unwilling to subordinate themselves to legal officials in another establishment. No quarters were available in which to bring them together in the Department of Justice at the date of the formal transfer. Subsequently, because the Department of Justice Act had not specifically repealed earlier legislation prescribing their duties, the solicitors claimed that their duties were defined by statute and were not subject to determination by the Attorney-General. The incorporation of the several earlier statutes in the *Revised Statutes* helped to solidify their claim. The outcome was that they remained in the several departments, with only nominal connection with the Department of Justice.[7] Still other positions of solicitors were created after 1870, some nominally in the Department of Justice and others having no connection with it.[8]

The first important threat to centralized control of litigation after the establishment of the Department of Justice came with the creation of the Interstate Commerce Commission in 1887.[9] One purpose of giving control over railroads to an independent commission rather than to an agency in the executive branch of the government was to avoid politics in administration. In the original and supplemental measures, therefore, much of the actual control of litigation was given to the Commission itself rather than to the Department of Justice, although the Department had a measure of authority at some points.[10] President Taft and Attorney-General Wickersham were critical of the Commission's control of litigation along with its other powers. In proposing to Congress a bill drafted by the Attorney-General to create a commerce court, the President made the following statement:[11]

> Under the existing law, the Interstate Commerce Commission itself initiates and defends litigation in the courts for the enforcement, or in the defense, of its orders and decrees, and for this purpose it employs attorneys who, while subject to the control of the Attorney-General, act upon the initiative and under the instructions of the Commission. This blending of administrative, legislative, and judicial functions tends, in my opinion, to impair the efficiency of the Commission by clothing it with partisan characteristics and robbing it of the impartial judicial attitude it should occupy in passing upon questions submitted to it. In my opinion, all litigation affecting the Government should be under the direct

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[7] Sewall Key, *op. cit.*, pp. 184–185.

[8] Langeluttig, *op. cit.*, pp. 57–60.

[9] 24 Stat. 379.

[10] See *Annual Report of the Attorney-General*, 1909, p. 6.

[11] House Doc. No. 484, 61st Cong., 2d sess., pp. 5–6.

control of the Department of Justice; and I therefore recommend that all proceedings affecting orders and decrees of the Interstate Commerce Commission be brought by or against the United States *eo nomine,* and be placed in charge of an Assistant Attorney-General acting under the direction of the Attorney-General.

The Attorney-General won an incomplete victory. Congress provided that proceedings brought in the Commerce Court should be brought in the name of the United States instead of in the name of the Commission, and that the Attorney-General should have charge and control of the interests of the government in the Commerce Court. It provided further, however, that the Interstate Commerce Commission and other interveners should have a right to appear, "and be represented by their counsel."[12] The Commission used this privilege to the full, so that in effect rival government counsel appeared in each case. In his annual report for 1912, Attorney-General Wickersham protested against this arrangement, saying that "while the Department of Justice and the Interstate Commerce Commission have thus far been able to avoid any differences in policy in conducting litigation arising under the act, still it will readily be seen that such differences might well arise, and that the interests of the Government are not apt to be advanced where those charged with the representation of its interests in legal proceedings are in disagreement, and the power and responsibility of decision is not vested in any one."[13]

No steps were taken to provide a remedy until several years later, when an informal solution was worked out as a result of another Taft intervention. Deploring the duplication of government representation before the Supreme Court, Chief Justice Taft suggested to Solicitor-General William D. Mitchell an arrangement for dividing cases between the Department of Justice and the Interstate Commerce Commission for purposes of argument, with the coöperation of both agencies in the preparation of each brief. The suggestion was followed. The Department of Justice made the division of cases, retaining for argument cases involving clear questions of law of considerable importance, and allotting to the Interstate Commerce Commission those involving detailed questions of fact and complex adjustments within the transportation system. The arrangement is still in effect.[14]

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[12] 36 Stat. 543.

[13] *Annual Report of the Attorney-General,* 1912, p. 57.

[14] Perhaps because of charges that the Attorney-General, for political reasons, would on occasion refuse to prosecute interstate commerce cases, Congress also

The World War brought temporarily a more complete centralization both of litigation and of other legal functions, through an executive order[15] based on the Overman Act,[16] a statute which gave the President broad powers of reorganization for war purposes. After the war, however, a movement toward decentralization took place. Early in 1920, in the Transportation Act,[17] by which the government returned the control of railroads to private hands, Congress authorized the Interstate Commerce Commission to employ attorneys "to appear for or represent the Commission in any case in court."[18] In the same year, Congress gave the United States Shipping Board the right to employ attorneys "to represent the Board in any case in court."[19] The Veterans' Bureau, established in 1921, assumed control over veterans' litigation.[20] In spite of resistance by at least one federal court,[21] and at times apparently without specific statutory authorization, it is said that by 1930 some litigation was being conducted independently by nine departments and other agencies of the government.[22]

This development was but part of the chaos in the control of government legal work generally. A study made in the Department of Justice and published in an appendix to the *Annual Report of the Attorney-General* for 1928[23] disclosed a total of 919 legal positions in the executive departments and independent offices in Washington, of which only 115 were under the specific control of the Attorney-General. The Interstate Commerce Commission had four more than the Department of Justice, while the Treasury Department had 253 such positions. The Attorney-General recommended that Congress give serious consideration to the desirability of consolidating all legal activities of the government under the super-

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added to the Wickersham bill a provision that the Interstate Commerce Commission or other interveners might prosecute cases in which the Attorney-General failed to act, and that the Attorney-General might not discontinue a suit or proceeding over the protest of an intervener. In Interstate Commerce Commission v. Oregon-Washington Railroad & Navigation Co., 288 U.S. 14, the Supreme Court recently upheld the right of the Commission to appeal a case to that court even though the Attorney-General should refuse to join in the appeal.

[15] Exec. Order No. 2877, May 31, 1918.

[16] 40 Stat. 556.

[17] 41 Stat. 456.

[18] 41 Stat. 492.

[19] 41 Stat. 989.

[20] Sewall Key, *op. cit.*, p. 191.

[21] See Sutherland v. International Ins. Co., 43 F. (2d) 919 (1930).

[22] Treasury Department, Bureau of Internal Revenue, Department of the Interior, Department of Agriculture, Patent Office, Department of Labor, Interstate Commerce Commission, Veterans' Bureau, and Federal Radio Commission. See Sewall Key, *op. cit.*, p. 197.

[23] Pp. 343–351.

vision of the Attorney-General, saying that present conditions were akin to those which had resulted in the creation of the Department of Justice.[24]

In 1932, the desire to reduce government expenditures led to the enactment of a statute authorizing the President to shift and consolidate executive agencies.[25] The task of working out a plan of reorganization was assigned to the director of the Bureau of the Budget, J. Clawson Roop.[26] Attorney-General Mitchell wrote to Roop complaining of the dispersion of authority over legal work which had taken place in recent years, particularly in instances where the control of litigation had been left outside the Department of Justice. He discussed specifically a plan for taking over Veterans' Administration litigation, and sharply criticized the handling of litigation by the United States Shipping Board. He could see no reason why the great mass of internal revenue litigation should be handled by counsel not connected with the Department of Justice.

The plan of reorganization which was worked out dealt with only one phase of litigation control. The handling of Veterans' Administration cases was to be transferred to the Department of Justice, together with such personnel engaged in that work as the Attorney-General should choose to accept.[27] The House of Representatives disapproved of this and other reorganization plans, apparently because of a desire that the whole subject be left to the Administration about to take office.[28] The executive orders issued by President Hoover therefore failed to become effective.

II

The reorganization statute was amended March 3, 1933.[29] Pursuant to it, the Roosevelt Administration sought to work out a new alignment of agencies and functions. Thorough consideration was given to the integration of the various types of legal work in the government. The conclusion was reached that most or all litigation ought to be brought under the control of the Department of Justice, while the internal work of the several departments and agencies ought to be left to them, without Department of Justice interference. The subject was dealt with in Executive Order No. 6166, issued by President Roosevelt on June 10, 1933. By that order, the three remaining department solicitors still under the nominal control of the Department of Justice were transferred to their respective departments.[30] All Department of Justice control over the internal legal work of other government agencies was thereby apparently terminated. The control of litigation, on the other hand, and the supervision of United States attorneys, were apparently confirmed in the Department of Justice by the following language:

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[24] Pp. 1–2. The recommendation was repeated the following year. See *Annual Report of the Attorney-General*, 1929, p. 1.

[25] 47 Stat. 413.

[26] New York *Times*, Sept. 14, 1932.

[27] Executive Order No. 5967, Dec. 9, 1932.

[28] New York *Times*, Jan. 20, 1933.

[29] 47 Stat. 1517.

> The functions of prosecuting in the courts of the United States claims and demands by, and offenses against, the Government of the United States, and of defending claims and demands against the Government, and of supervising the work of United States attorneys, marshals, and clerks in connection therewith, now exercised by any agency or officer, are transferred to the Department of Justice.
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> As to any case referred to the Department of Justice for prosecution or defense in the courts, the function of decision whether and in what manner to prosecute, or to defend, or to compromise, or to appeal, or to abandon prosecution or defense, now exercised by any agency or officer, is transferred to the Department of Justice.

The executive order rendered necessary a number of procedural adjustments in the Department of Justice for handling the transferred litigation. A tax division was established,[31] for instance, and a bureau to handle veterans' litigation.[32] The most serious problems of adjustment, however, arose in connection with emergency agencies existing only in contemplation or in their formative stages when the executive order was issued. Some of these agencies fought for the right to handle their own litigation. Conflicts between them and the Department of Justice comprised a series of dramatic, though largely unpublicized, episodes from 1933 to 1935.

A number of the statutes enacted to deal with the depression emergency linked the emergency agencies in one way or another with the Department of Justice, without conflicting with the disposal of litigation control made by the executive order. The National Industrial Recovery Act, for instance, on the basis of which the National Recovery Administration, the Petroleum Administrative Board, and other agencies were established, provided that it should be the duty of the district attorneys of the United States, "under the direction of the Attorney-General," to institute equity proceedings to prevent and restrain code violations.[33] The Agricultural Adjustment Act, pursuant to which the Agricultural Adjustment Administration was established in the Department of Agriculture, provided that the Secretary of Agriculture might report violations of crop reduction agreements to the Attorney-General, who should begin enforcement proceedings without delay.[34]

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[30] Solicitors of the Treasury, Commerce, and Labor Departments. The solicitor of the Interior Department seems never to have been formally transferred from the Department of Justice to that Department (see U.S. Code, Title 5, Sec. 297), but appropriations are now made through the Interior Department, and to all intents and purposes the solicitor is an employee of that department.

[31] See *Annual Report of the Attorney-General*, 1934, pp. 54–55.

[32] See *ibid.*, 1935, p. 170.

The earliest, and perhaps the most intense, friction over the control of litigation arose in connection with the Petroleum Administrative Board, which was set up in the Department of the Interior to exercise the powers over the petroleum industry conferred upon the Secretary.[35] Officers of the board were eager to resort to legal coercion to check excess production and waste. The Department of Justice had gone through the enervating experience of a change in administration, and suffered from the economy plans of both the old administration and the new. For these reasons, little could be done during the early months to rebuild personnel. The Department was not equipped, therefore, to assign any considerable number of men to handle Petroleum Board litigation. Under pressure from the Board, the Attorney-General appointed a number of the Board attorneys as special assistants to the Attorney-General, to be assigned to cases by the Attorney-General, but to serve without pay from the Department of Justice. Seventeen such appointments were made in this agency. The arrangement turned out badly. Assistant Attorney-General Harold M. Stephens, then in charge of the anti-trust division of the Department of Justice, made the following statement before a congressional subcommittee toward the end of 1934:[36]

> That turned out to be an unwise expedient because they did not have the sense of responsibility to the Department of Justice. They were not paid by us and they were working under another aegis. They had an enthusiasm and a zeal for their statutes which sometimes went beyond the bounds of the Department of Justice attitude toward law enforcement.

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[33] 48 Stat. 195, 196.

[34] 48 Stat. 31, 38.

[35] See Exec. Order No. 6204, July 14, 1933.

[36] Hearings on the Department of Justice appropriation bill for 1936, 74th Cong., 1st sess., pp. 121–122. For some evidence of the cartel dispute, see New York *Times*, March 6 and 9, 1934.

> We had to terminate that arrangement to be sure that we could control properly the work for which we were responsible. As a result of that arrangement, there arose one or two very unfortunate mishaps involving a difference of opinion between departments. One involved the Petroleum Cartel, which we had to take to the President, objecting to the attitude of a sister administration.

The Secretary of the Interior differed publicly with Department of Justice officials on interpretation of the petroleum code, and criticized indictments brought against particular offenders.[37] His attorneys, on the basis of their authority as special assistants to the Attorney-General, instituted cases in large numbers, and dismissed cases without consultation with the Department of Justice, in violation of the rules of the Department. These attorneys, if not the Secretary himself, made themselves exceedingly unpopular with some Department of Justice officials.

Additional difficulties arose early in 1934, when certain individuals were indicted for conspiracy to violate provisions of the petroleum code. The court sustained the defendants' demurrer, holding the code and the statute on which it was based to be unconstitutional. The Secretary of the Interior requested of the Attorney-General permission to prosecute an appeal to the Supreme Court. He made the following additional request:

> If the appeal is authorized, I shall appreciate your entrusting the conduct thereof to members of the legal staff of the Petroleum Administrative Board whom you have designated special assistants. On account of their special and exhaustive study of the questions raised and their general familiarity with the problems involved, I believe that they are particularly well qualified to present the case.

Although the Department of Justice was hesitant about leaving this case with Petroleum Board lawyers, thereby extending an undesirable practice of dividing responsibility, it decided for some reason to make the concession in this case. It was made, with the reservation that "as all briefs filed in the Supreme Court must have the approval of the Solicitor-General and the head of the division handling the matter, and be signed by these officials, after the brief in the above entitled case has been drafted, it will be necessary to submit it to Judge Stephens for his approval and that of the Solicitor-General." In addition to this reservation, the Attorney-General's letter to the Secretary of the Interior made the following significant general statement:

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[37] New York *Times*, March 25 and 30, 1934.

> This Department must retain control of all Government causes in the Supreme Court, and in complying with your request to permit this case to be argued by the members of the legal staff of the Petroleum Administrative Board, whom I have heretofore designated as special assistants, it will be understood that this is not to be taken as a precedent in the event such a request is made in the future.

Petroleum Board lawyers proceeded with the preparation of the case, which was known usually as United States v. Smith.[38] Advice came to the Department of Justice from the general counsel of the National Labor Board, and perhaps from other sources, that the record in the case was sadly defective, and that it would be an exceedingly bad case in terms of which to seek a Supreme Court decision on the constitutionality of the Recovery Act as a whole, in which several different agencies were concerned. As the end of the current term of court approached, the Department of Justice asked for copies of the brief, and found that they were not ready. It became apparent that if the case was to be argued at that term there would be little or no time for Department of Justice revision of the brief. Rather than incur the risks involved, the Solicitor-General secured the postponement of the case until the ensuing term.[39]

The postponement was denounced by friends of the Petroleum Board and by critics of what seemed to be excessive caution in the handling of litigation. It was "an open secret in Washington that the legal defenses of the New Deal are in a bad way," said the *New Republic.* "The Petroleum Board is wholly responsible for the administration of the Oil Code, yet its work may be completely undone by an uninformed decision of the Department of Justice."[40]

In the meantime, another case involving the petroleum code, entitled Amazon Petroleum Corporation v. Ryan, came up through the lower courts, and along with it still another, entitled Panama Refining Company v. Ryan, which had to do with the Recovery Act as it affected the petroleum industry. Both were equity cases. It was decided to concentrate on them as test cases, and move the dismissal of the Smith case. That case was accordingly dismissed.[41] The equity cases had been handled in the lower courts by the district attorney and Petroleum Board lawyers who had been appointed special assistants. While relying on the Petroleum Board for assistance, the Department of Justice retained control of the cases in the Supreme Court, and set about the preparation of briefs.[42] On looking into the materials, Special Assistant M. S. Huberman, to whom the task had been assigned in the Department of Justice, discovered to his astonishment that the provision of the petroleum code involved in the Amazon case, and which had been involved in the Smith criminal case, had been inadvertently dropped in the process of amending the code, and had not been in existence during the entire period of the litigation.[43] Members of the Petroleum Board had learned of the omission shortly after it had been made, but, knowing it to have been unintentional, they apparently had assumed it to be of little importance.

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[38] Washington *Post,* March 17, 1934.

[39] New York *Times,* May 1, 1934.

[40] *New Republic,* May 23, 1934.

[41] United States v. J. W. Smith, 293 U.S. 633 (Oct. 1, 1934).

The Department of Justice, therefore, with Judge Stephens as its spokesman, had to face the Supreme Court crippled by the mistakes of lawyers of another agency. Opposition counsel made the most of the situation. It was said, referring to the Smith case which had now been dismissed, that "Smith was arrested, indicted, and held in jail for several days and then had to put up bond for violating a law that did not exist." A reporter stated that "smiles appeared on the usually solemn faces of the Justices and the crowd of lawyers that filled the room when Mr. Stephens admitted that the trial court had sustained a demurrer to the indictment on the ground that the non-existent section of the code was unconstitutional and that the Justice Department had appealed this decision to the Supreme Court."[44] The experience doubtless added to the determination of the Department of Justice to keep government litigation under its own immediate supervision.[45]

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[42] An amicable arrangement was made during the summer of 1934 to terminate the Department of Justice appointments of Petroleum Board attorneys as special assistants. Their duties thereafter in connection with litigation, like those of attorneys in other government agencies, were to aid in the preparation of cases for argument by Department of Justice attorneys.

[43] For Huberman's account of the discovery of the error, see C. B. Swisher (ed.), *Selected Papers of Homer Cummings*, pp. 127–128. See also Panama Refining Co. v. Ryan, 293 U.S. 388 (1935).

[44] New York *Herald-Tribune*, Dec. 12, 1934. The Department of Justice did not appeal the case to the Supreme Court. Since the Department wished a determination of the constitutional issue, however, it did not oppose the granting of *certiorari.*

[45] The criticisms made by the Supreme Court in the opinions in the Panama case, *supra*, were addressed not so much at the error with respect to the executive order as at the unavailability of copies of administrative rulings having the force of law. The criticisms gave impetus to the movement which resulted in the establishment of the *Federal Register*, and in the codification of administrative orders which is about to be published.

III

Some emergency agencies at first relied heavily upon persuasion rather than upon coercive litigation to compel obedience to codes of fair competition and to crop reduction and marketing agreements. The Department of Justice, in order to avert interference with Administration policies, instructed district attorneys throughout the country not to begin enforcement of the Recovery Act and the Agricultural Adjustment Act on their own initiative, but to refer all complaints to the Department for instructions.[46] The Department forwarded to the National Recovery Administration the reports of violations of the Recovery Act. The N.R.A. doubtless made use of these reports through its compliance officers stationed throughout the country, who were trying to educate and persuade people to comply with the act. It did not, as a rule, send them back to the Department of Justice with the request that prosecutions be instituted.

After a few months, however, the N.R.A. realized the ineffectiveness of persuasion as the sole mode of enforcement, and looked toward litigation as at least a supplemental aid. With an insistence on speed in new directions which was characteristic of the emergency activities of the period, it made heavy demands on the Department of Justice for designation of a staff of attorneys to handle litigation. In March, 1934, it was reported that twenty-five Department of Justice attorneys had been assigned to work with the legal division of N.R.A.[47] In April, N.R.A. announced that court enforcement had been handicapped by the limited staff of the Department of Justice. N.R.A. had therefore established its own litigation division, which would concentrate on preparation and prosecution of court cases in the name of the Department of Justice.[48]

N.R.A. attorneys, however, like those of the Petroleum Board, could handle cases in court only on the authorization of the Attorney-General. A few of them had been, or were subsequently, given appointments as special assistants to the Attorney-General. In view of the experience with Petroleum Board attorneys, however, and in view of the fact that N.R.A. had boldly announced its assumption of control of litigation without an advance arrangement with the Department of Justice, the Department balked at wholesale appointment of N.R.A. attorneys to positions in which they would have nominal responsibility to the Attorney-General but actual responsibility to men who seemed inclined to act as free agents. On April 9, 1934,[49] Attorney-General Cummings wrote as follows to Hugh S. Johnson, N.R.A. Administrator:

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[46] Department Circular No. 2441, Aug. 8, 1933.

[47] New York *Times*, March 10, 1934.

[48] *United States Law Week*, April 3, 1934; Washington *News*, April 6, 1934.

> A divided responsibility with respect to the duties of the Department of Justice to carry on in the courts the legal proceedings necessary to enforce the National Industrial Recovery Act and Codes is not advisable for either of the departments concerned. The Department of Justice should, in my view, continue to exercise its established functions and assume full responsibility for the institution and prosecution of litigation and carry these duties on through the United States District Attorneys. I am of the view, therefore, that the Department of Justice should not deputize members of your legal staff as Special Assistants to the Attorney-General. Exceptions made to this rule during the past year in connection with other departments have not proved satisfactory, either from the standpoint of the Department of Justice or that of the sister department concerned.

N.R.A. officials submitted with rather bad grace. Correspondence thereafter revealed the strain produced by this conflict of jurisdiction, and by disagreements throughout the Administration as to the best strategy for securing favorable court decisions on the constitutionality of the various aspects of the New Deal program. N.R.A. was much disturbed by a federal district court decision in western Kentucky holding the National Industrial Recovery Act unconstitutional and directing a temporary injunction against the enforcement of the coal code.[50] The Department of Justice took more time to consider the question of appeal than the Recovery Administration thought necessary. The impatience of N.R.A. officials was expressed in a letter of June 6, 1934, from Donald Richberg to Attorney-General Cummings, in which the delay was sharply criticized. "May I not suggest," said Richberg, "that you give to our staff a highly desirable freedom of action in this case by deputizing one of our experienced men with authority to proceed in accordance with our views. . . . If, however, our views of law and procedure and those of the Department are so seriously in conflict that we cannot give adequate protection to code administration, I think you and I ought to have a clear understanding of this so that I can at least save the expense of maintaining a helpless division of litigation."

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[49] On the same day, Department Circular No. 2538 was sent to the district attorneys, releasing them from the duty of referring N.R.A. complaints to the Department, thus facilitating action.

[50] Hart Coal Corporation v. Sparks, 7 F. Supp. 16, May 19, 1934.

The Attorney-General replied with an explanation of the position of the Department in this particular case. With reference to Richberg's general comments on the subject of the control of litigation, he added that in view of the express provision of the National Industrial Recovery Act and the executive order of June 10, 1933, "your suggestions are impracticable of adoption."

Although the Attorney-General professed to expect little difference in views as to the conduct of litigation, there was much weaving back and forth in the several agencies of the government in deciding on the best mode of dealing with the delicate issue of constitutionality—what cases to advance and in what order and with emphasis on what constitutional points, and what cases to be dismissed at all costs. There were sharp differences of opinion within each agency, and particular officials changed opinions from time to time with reference to particular questions and particular cases. Disagreement and mutual criticism were therefore inevitable. In the summer of 1934, N.R.A. lawyers involved the government in difficulties by inept handling of an embarrassing clothing code case in Baltimore,[51] with the result that Department of Justice lawyers had to do a great deal of diplomatic work smoothing out the situation. Internal diplomacy was further strained by the blunt request of the acting general counsel of N.R.A. that the Department of Justice make no statements concerning the case without previous consultation with N.R.A. Assistant Attorney-General Stephens replied, grimly suggesting that N.R.A. neither make statements nor take further steps in the case without consultation with the Department of Justice.

Emergency agencies at times allowed their legal judgment to be swayed by outside pressure for hasty action and by their own zeal in their causes. Alleged violations of Section 7a of the National Industrial Recovery Act, which was intended to guarantee to labor the right of collective bargaining through self-chosen representatives, brought tremendous pressure from organized labor and from liberal groups for immediate and vigorous prosecution. The National Labor Board and allied and succeeding boards at times yielded to the pressure and recommended action to the Department of Justice before an adequate amount of legal evidence had been amassed. Criticism for further delays therefore fell upon the Department of Justice. On the basis of a rumor that the Attorney-General had decided not to prosecute in one case, a liberal magazine poured out denunciation in an article entitled "Goodbye Section 7a."[52] The article was deemed so inaccurate and so offensive that a reply to it was prepared in the Department, but the passage of time and the restoration of a sense of humor prevented its being sent. The necessity of falling back on the Department of Justice to resist pressure to instigate litigation before it was justified by the evidence available illustrated one of the arguments for centralized control of litigation.

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[51] The case against L. Greif and Company, of Baltimore. See the New York *Times*, July 24, 1934.

Rivalry between the Department of Justice and the Agricultural Adjustment Administration revealed itself early in 1934. On March 8, the United States attorney at Boston informed the Department of the initiation of an important case—one which finally reached the Supreme Court as United States v. Butler. Department officials arranged to prepare a brief, and sent the A.A.A. notice of the case and suggested coöperation. Some time later Department officials discovered to their surprise that A.A.A. lawyers had gone ahead independently in preparation of the case, had sent an investigator to Boston, and had apparently talked with counsel for one of the parties with reference to stipulations, and had even been in touch in some way with the judge. In reply to an inquiry, Jerome Frank, general counsel for the A.A.A., asked that the case be referred to the A.A.A. for argument, and suggested the appointment of himself and one of his subordinates as special assistants for the purpose.

The controversy was settled at a conference, and the handling of this case was shared by the two agencies. Thereafter an agreement was reached that the Department of Justice should conduct all litigation, making use of materials to be assembled by the A.A.A. This decision was to be subject to rehearing if a very large amount of litigation should eventuate. Almost immediately, the A.A.A. began agitation for reconsideration of the question, on the ground that a large amount of litigation was imminent, and that it could not be handled by existing legal staffs. It was therefore necessary that additional able lawyers be employed by the A.A.A., with litigation work in prospect. The gist of the argument is expressed in the following excerpt from a letter from Jerome Frank to Special Assistant Golden W. Bell:

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[52] *New Republic*, Oct. 31, 1934.

> In the first place, we will not be able to secure the caliber of attorneys we think required for trial work of this character at a salary which we are able to pay, unless we can assure them the opportunity for regular and constant trial experience. In addition, I do not believe that it would be desirable to staff my Legal Division with relatively high salaried trial men and so duplicate your staff, unless we are regularly to participate *actively* in litigation.
>
> As you doubtless know, it is not easy in a short time to procure highly capable trial lawyers. For many weeks, prior to Judge Stephens' recent decision as to the manner of handling this litigation, we had been searching the country for men of this type and had been successful in inducing several able lawyers to apply for positions. This was not an easy task, as most of them had to be coaxed away from their private practice, many of them contemplating monetary sacrifice in so doing. If Judge Stephens' decision is not now reversed or substantially modified, I shall feel obliged at once to notify these men that the promise of active litigation work cannot be fulfilled, and I am sure that almost all of them in such circumstances will refuse to join us, even if it were desirable (which it is not) to employ them at considerable expense to the government for what is, in effect, relatively unimportant work.

The Department of Justice reply, sent over the signature of the Attorney-General, was similar to the statements made to other agencies. "I regret to be compelled to advise you," said the Attorney-General, "as I have advised other Departments, that your suggestion is impracticable of adoption." Adequate protection would be given to the A.A.A. where litigation was involved. Should the volume of work necessitate the enlargement of the Department of Justice staff, it would be increased as the circumstances might require. In signing the letter, the Attorney-General noted the following remark for Mr. Bell: "If Mr. Frank has such a fine staff of trial lawyers, perhaps we could take a few off his hands. What do you think?"

IV

Although it had to defend its authority in many cases, as illustrated above, the Department of Justice succeeded in retaining control of the litigation of such agencies as the National Recovery Administration, the Agricultural Adjustment Administration, and the Petroleum Administrative Board—agencies which were integral parts of the executive branch of the government. Other government agencies were established as corporations, however, as for example the Reconstruction Finance Corporation, the Home Owners' Loan Corporation, and the Tennessee Valley Authority, and control of their litigation might reasonably be determined by theory different from that applicable to the agencies first mentioned. The question arose during the period of the controversies already discussed, in connection with the Tennessee Valley Authority. The T.V.A. was established as a corporation, with power to sue and be sued, and with other powers indicating the intention of Congress that it should have something of the flexibility of a private corporation.[53] It might be assumed, therefore, that control of its litigation was to remain in the hands of the corporation. In a letter to David E. Lilienthal, of the T.V.A., Judge Stephens stated as follows the claim for control by the Department of Justice:

> It is true that the Tennessee Valley Authority is a corporation, and that the statute which created it stated that the Authority might sue and be sued. At the same time, it seems obvious that the Authority is really an area, or department, of the Government. This being true, a suit against the Tennessee Valley Authority is, in my opinion, a claim or demand against the Government. If so, the duty of defending a suit against the Authority is imposed by law upon the Department of Justice.

Members of the T.V.A. Board were greatly disturbed by the suggestion that the Authority was really an arm or department of the government. Lilienthal replied to the letter of Judge Stephens in part as follows:

> The whole history of the project upon which we are engaged indicates, in the judgment of the Board, that we are not a "department" of the United States. You will recall that the properties which were transferred to the Tennessee Valley Authority by the act under which we operate were constructed and operated by a "department" of the United States, namely, the War Department. To change the preëxisting situation, by transferring these properties and the duty of operating them from a "department" to a different kind of agency, was the express desire of the President, as indicated in his message transmitting the Tennessee Valley Authority bill to the Congress and endorsed by the Congress in passing that bill. Such an agency was to have a separate corporate status. It was to have, as the President put it, the flexibility of a private corporation, and the statute as passed gives the Board of Directors the broadest powers, in conformity with this concept of a corporate agency as distinguished from a "department" of the Government. By its express terms, the law permits no division of ultimate responsibility.

Studies of the situation were conducted in the Department of Justice. In view of the nature of the litigation in which government corporations were likely to be engaged, and of the volume to which it might run, the Department seems to have hesitated to demand full control as a matter of principle. Furthermore, there seems to have been some doubt as to whether or not the Department could win out in a struggle with the T.V.A. and other government corporations at the time. The general issue, therefore, was not forced.

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[53] 48 Stat. 58.

The problem of T.V.A. litigation, as distinct from government corporation litigation generally, was taken up with the President, who suggested or approved a solution. A conference was then held between Lilienthal and Department of Justice officials. At that conference, in the words of Judge Stephens, "there was adopted the President's suggestion that in all litigation in which the Tennessee Valley Authority as a corporation is a party, involving constitutional questions, the Authority is immediately to notify the Department of Justice upon the filing of such litigation; that thereupon the Attorney-General is to designate a member of his staff to consult with the General Solicitor of the Authority in all subsequent action in the case, including appeal from the trial court."

Such an arrangement was calculated to permit the Attorney-General to maintain consistency of policy in the presentation of government cases to the Supreme Court, while at the same time leaving the Department of Justice free from responsibility for the mass of litigation having to do with damage suits, land acquisition, and other routine matters. It was put into effect, and has worked harmoniously. Success here, as in other arrangements involving the coöperation of two or more agencies, has been the product, not of any striking ingenuity in the arrangement, but of the desire of the parties involved to work together effectively.

V

The statutory authorization to consolidate litigating functions, on which the 1933 executive order was based, was followed almost immediately by scattered statutory provisions tending to redistribute control. One such provision was enacted even before the executive order was issued. On March 31, 1933, hearings were begun before House and Senate committees on identical bills to protect the public against abuses connected with the sale of securities. The measure gave to the Attorney-General the power both to institute criminal proceedings and to seek injunctions against the performance of illegal acts. Before both committees, however, the chief counsel for the Federal Trade Commission asked for an amendment. Since the facts on the basis of which action was to be taken were to be gathered by the Federal Trade Commission, he asked that the Commission be empowered to seek injunctions directly, without sharing responsibility with the Attorney-General. Criminal proceedings would, of course, be left to the direction of the Attorney-General.[54]

The fact that the bill was modified in this respect may have been due to the cogency of the argument that responsibility for injunction cases should not be divided, or it may have been due to sentiment such as that expressed by a senator to the effect that "the Department of Justice has been absolutely derelict in its duty in connection with these fraudulent transactions and fraudulent security sales.[55] At any rate, the measure as enacted provided that the Commission, on the one hand, might bring actions in federal courts to enjoin illegal acts, and, on the other hand, might present evidence to the Attorney-General, who, at his discretion, might institute criminal proceedings.[56] When, a year later, the administration of the Securities Act of 1933 was transferred to the Securities and Exchange Commission, the power of instituting equity proceedings went with it.[57]

A similar dispersion of authority over litigation took place in the enactment of the National Labor Relations Act of 1935. The bill introduced by Senator Wagner in 1934 to provide for the creation of a National Labor Board contained a provision to the effect that "it shall be the duty of the several district attorneys of the United States, but solely at the request of the National Labor Board, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain any such unfair labor practices."[58] The Department of Justice criticized the proposed interference of the Labor Board with the district attorneys, and the division of authority with respect to the control of litigation. On May 29, 1934, a letter was sent to Senator Robinson enclosing a proposed amendment and saying that "it has recently been the endeavor to place all litigation to which the United States is a party under the direction and supervision of the Attorney-General, not only with a view to economy, but also for the purpose of having a uniform policy and avoiding the possibility of inconsistent positions being taken on the same questions of law."

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[54] Senate Committee on Banking and Currency Hearings on S. 875, 73d Cong., 1st sess., p. 226. House Committee on Interstate and Foreign Commerce Hearings on H. R. 4314, 73d Cong., 1st sess., pp. 240–241. A copy of the bill appears on pp. 1–9 of each volume.

[55] Senator Burton K. Wheeler, 77 *Cong. Rec.*, Pt. III, p. 2983.

[56] 48 Stat. 86.

[57] For the ruling case on the subject, see Securities and Exchange Commission v. Robt. Collier & Co., 76 F. (2d) 939 (1935). See also Securities and Exchange Commission v. Stock Market Finance, 79 F. (2d) 1010 (1935).

[58] See section 6 of the bill, Senate Committee on Education and Labor Hearings on S. 2926, 73d Cong., 2d sess., pp. 1–7.

No action was taken at that session of Congress. At the next session, a new bill was introduced, with an almost identical objectionable provision. The Department of Justice again protested. This particular provision was finally eliminated, but another more drastic in character was inserted, to the effect that "attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court." It is not improbable that this language was used because of the belief prevailing in some liberal groups that Department of Justice lawyers were not sufficiently aggressive in enforcing the collective bargaining provisions of the Recovery Act, and that better results could be secured through Labor Board attorneys. At any rate, the provision was enacted as a part of the new measure.[59] Litigation of the National Labor Relations Board in the lower federal courts has therefore been handled exclusively by the Board's own attorneys. Cases in the Supreme Court are prepared jointly by Labor Board and Department of Justice attorneys, and the briefs are signed by the Solicitor-General and others in the Department along with the Labor Board representatives. The procedure is a comity arrangement among attorneys who work well together. No little strife would doubtless be caused were an attempt made to exclude the Labor Board on the basis of the general authority of the Solicitor-General over government litigation in the Supreme Court, or were the Labor Board, on the basis of its statutory power, to seek to oust the Solicitor-General altogether from control.

The enactment of the Fair Labor Standards Act of 1938 witnessed a similar controversy over the control of litigation. The bill as originally introduced in both houses of Congress provided for a

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[59] 49 Stat. 451.

Labor Standards Board. The Board was to have the power to seek injunctions against violations of the act, and might transmit evidence to the Attorney-General, who at his discretion might institute criminal·proceedings.[60] Among the many amendments to the measure which were considered before its enactment was one by the House Committee on Labor to the effect that "the Board shall be represented in all litigation by the Attorney-General or such attorney or attorneys as he shall designate."[61] As it was finally passed, the act provided for an Administrator instead of a Board, and contained a statement that "attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney-General."[62]

How far the effect of this provision differs from that of the provision in the National Labor Relations Act is a matter of doubt. In the Labor Relations Act, nothing is said about control. Whether the added provision in the more recent measure indicates that in the Labor Relations Act control passed with the right to appear in court, or whether the reservation merely states more clearly the situation which prevailed even where attorneys for an administrative agency were permitted to appear in court, is far from clear. As a working arrangement under the Fair Labor Standards Act, the Department of Justice and the Administrator have agreed upon a procedure similar to that suggested by the original bill. Civil litigation is handled by the Administrator, while criminal matters are referred to the Attorney-General.

Other instances of legislative interference with the exclusive handling of litigation by the Department of Justice occurred during the year 1938. In an amendment to the Federal Trade Commission Act with respect to false advertising, a provision was included that "the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement."[63] In the Natural Gas Act, it was provided that the Federal Power Commission might employ attorneys for work before the Commission "or to appear for or represent the Commission in any case in court."[64]

[60] For the original bill, see New York *Times*, May 25, 1937.

[61] House Report, No. 1452, 75th Cong., 1st sess., p. 13.

[62] 52 Stat. 1061. [63] 52 Stat. 114. [64] 52 Stat. 832.

The Civil Aëronautics Act, on the other hand, incorporated a somewhat different policy. It provided that United States attorneys should promptly institute proceedings for the enforcement of liens against aircraft seized by the Civil Aëronautics Authority, or notify the Authority of failure so to act.[65] Again, it was to be the duty of United States attorneys to institute in the proper courts, "and to prosecute under the direction of the Attorney-General," all necessary proceedings for the enforcement of other provisions of the act.[66] Evidently in order to make possible the appearance of Authority attorneys in court without appointments as special assistants to the Attorney-General, a provision was added that "upon request of the Attorney-General, the Authority shall have the right to participate in any proceeding in court under the provisions of this chapter."[67]

VI

To explain the present organization of the legal functions of the government, certain facts already mentioned need to be restated and enlarged upon. The internal legal work of the several agencies, like most other government functions, has expanded tremendously in recent years. Within some departments it is so voluminous and so varied as to create problems of organization similar to those of organizing such work for the government as a whole. In most departments and other establishments having substantial legal staffs, a great deal of the work is done by attorneys under the direction of a department solicitor or general counsel, but specialized tasks may be in the hands of attorneys over whom the solicitor has little or no control. Departmental legal activities fall into many groups. During the course of a year it may be necessary to study and report on large numbers of bills proposed for congressional enactment which affect the work of a department. At the request of congressmen or otherwise, it may seem advisable to draft bills for legislative consideration. Departmental representatives who appear at congressional committee hearings must be equipped with a mass of legal information. Again, solicitors must provide routine legal advice and prepare formal opinions for the use of their departments. Such opinions deal with statutes and rules and regulations applicable to the special functions of the respective departments, but they may verge upon public law questions of a type which should be, and to some extent are, referred to the Attorney-General, through requests of department heads for formal advice. Even though department policies may be made by men not specialists in law, the drafting of departmental rules and regulations, and their subsequent interpretation, must be done or supervised by men with legal training. Hearings held to provide bases for administrative decisions likewise call for legal training. Department attorneys assemble the factual materials and often do much toward the preparation of briefs used by the Department of Justice in litigation.

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[65] 52 Stat. 1017. [66] 52 Stat. 1025. [67] 52 Stat. 1025.

In discussing the status of litigation control, it is necessary to differentiate between litigation in the Supreme Court and in other courts. Few encroachments have been made upon Department of Justice control of government litigation before the Supreme Court. The Interstate Commerce Commission may still prosecute appeals which the Department of Justice declines to take. The Department and the Interstate Commission still coöperate in the preparation of briefs in many cases, and divide the cases between them for purposes of argument. The Department may, and does, permit attorneys for the National Labor Relations Board and the Tennessee Valley Authority to argue Supreme Court cases in conjunction with Department counsel or alone. The briefs are prepared in conjunction with the Department, however, and it is the final judge of form and content. The briefs are accepted by the Supreme Court only when sponsored by the Solicitor-General. The Department thus retains final authority, and it permits the argument of cases only by men in whom it has confidence.[68] By retaining control, it is able to secure uniformity of position with reference to legal questions dealt with in the variety of cases presented to the Court.

The Court itself quite evidently desires a single spokesman on the part of the government. When in a recent public utility case[69] the Federal Communications Commission and the Federal Power Commission sought to file briefs as *amici curiae* without going through the Department of Justice, it was necessary for the Solicitor-General to present the briefs to secure their acceptance. The following somewhat non-committal statement, signed by the Solicitor-General, was pasted in the back of the Communications Commission brief: "The Solicitor-General submits the foregoing brief, prepared by the Federal Communications Commission, as an adequate presentation of the position of that Commission on administrative action in rate-making proceedings." A similar statement was pasted in the back of the Power Commission brief: "The Solicitor-General submits the foregoing brief, prepared by the Federal Power Commission, as an adequate and useful presentation of the position of that Commission on the problem of valuation." The significant fact is that Department of Justice sanction was necessary to recognition of the Commissions by the Court. The Court as well as the Department would be opposed to the decentralization of the control of government litigation presented before it.

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[68] In this field, as in others, there are marginal facts which blur the picture. For instance, in Hines v. Lowrey, decided Nov. 7, 1938, Hines, Administrator of Veterans' Affairs in the Veterans' Administration, was represented before the Supreme Court by his own counsel, who filed a brief which was not submitted by the Department of Justice. Again, the Home Owners' Loan Corporation seems to have appeared independently and without the coöperation of the Department of Justice in Home Owners' Loan Corporation v. Central Market, 302 U.S. 687 (1937).

[69] Railroad Commission of California v. Pacific Gas and Electric Co., 302 U.S. 388 (1938)

The situation in the lower courts is substantially different. In most instances, at least a theoretical right of control is in the Department of Justice. Yet, as illustrated above, a number of statutes have been enacted giving agency attorneys the right to represent their respective agencies in court. Interpreted narrowly, the broadest of the statutes might be said to do no more than give such attorneys the right to handle litigation under the direction of the Attorney-General without the necessity of appointment as special assistants either to the Attorney-General or to the district attorneys. The lower court litigation of agencies having such statute rights, however, is conducted in part or in full by their attorneys with little, or, in most cases, no Department of Justice supervision. Furthermore, the Department of Justice acquiesces in agency management of litigation in some cases where not clearly provided by statute, as in the defense of orders issued by the Federal Trade Commission and the Securities and Exchange Commission.

Some agencies maneuver for a maximum of control of litigation. The cause may at times be the belief that agency counsel can do better work than the Department of Justice, because of greater specialized knowledge, or deeper interest, or superior ability. In the background usually lurks the yearning of agency counsel for the prestige connected with handling litigation. Representatives of some agencies discuss frankly the problems of litigation control. Others—as for example the Federal Trade Commission—greet inquiries with a refusal to talk which is hardly less revealing than frank discussion. The danger of gross mismanagement of litigation by inexperienced agency counsel is probably not as great now as in the chaotic period from 1933 to 1935, when new agencies with poorly defined duties were springing up over night.[70] The need remains, however, for coördinated approach to important legal problems. Unfortunately, even within the Department of Justice coördination is difficult when the mass of litigation becomes too great. Centralization in theory loses much of its persuasiveness unless there can be centralization in fact. It has been suggested that, without putting all litigation directly under the Attorney-General, periodic conferences might be held by Department of Justice officials and counsel for other agencies to work out methods of unified approach to significant legal problems.[71] The method is opposed by those who feel that it might result in infringement on the established prerogatives of either the Attorney-General or other agencies.

The position of the district attorneys is a complicating factor in the situation. Although they are now under the general direction of the Attorney-General, some characteristics remain of their early state of virtual independence, and of the subsequent long period wherein their work was supervised in part by each of a number of departments. Several agencies are now authorized by statute, in connection with one or more functions which they have to perform, to refer cases to district attorneys for prosecution. Without the reference of materials in the possession of the agencies, the district attorneys may have no factual basis upon which to act, if indeed they have authority to proceed independently at all. The agencies therefore have at least a negative control over the litigation to be instituted. Furthermore, although the statutes often provide that prosecution shall be under the direction of the Attorney-General, proceedings have often gone ahead with little or no direction from the Department of Justice.

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[70] An example of a continuing lack of discipline here and there, however, is found in the action of the Home Owners' Loan Corporation in submitting to the Supreme Court a petition for *certiorari* in a case in which the record did not show a final judgment. See Home Owners' Loan Corporation v. Central Market, 302 U.S. 687 (1937).

[71] This is said to have been the recommendation of Fred A. Ironsides to the National Emergency Council in a *Survey of Legal Staffs in the Departments and Independent Establishments*.

After the executive order of June 10, 1933, was issued, the Department sought to have all communications from other agencies to the district attorneys channeled through the Department, with discretion left to the Department or the district attorneys as to whether or not they should initiate suits. Some difficulty was found in working out with the Interstate Commerce Commission an acceptable arrangement for enforcement of Safety Appliance Acts[72] and Hours of Service Laws.[73] In insisting that matters going to the district attorneys pass through his hands, the Attorney-General stated that practically all departments and other establishments of the government had followed the custom of submitting their matters to the Department of Justice, which in turn transmitted them to the proper United States attorney if litigation was required. He thought that this course had generally been regarded as leading to administrative efficiency. The Department of Justice has been fairly successful in working out a coöperative formal arrangement. In fact, of course, the agencies select the materials they wish to submit, and often prepare the cases in such detail as to provide almost complete guidance for district attorneys. Department of Justice participation in such instances is apt to be little more than formal transmission of materials and recommendations. In some instances, apparently, only copies are sent to the Department of Justice, leaving to the Department only the matter of recommending the action to be taken. Agency counsel often work with district attorneys, so that actual participation by the Department of Justice becomes virtually non-existent.

The time has not yet come to appraise the significance of the fact that after the immediate effects of the 1933 executive order were realized, the decentralization of litigation control began again. Here, as elsewhere throughout the government, struggle goes on continually for jurisdiction over matters lying at the boundaries of the fields of the several departments and agencies. Even though an agency desires merely to hold its own, it must often become an aggressor to achieve that end. Loss of jurisdiction here and there in the period mentioned may perhaps be attributed to the fact that the Department of Justice has engaged in no predatory activities. In the event of a war or other national crisis, it seems probable, judging by past experience, that a renewed concentration of litigation functions in the Department of Justice would take place. Most or all of the varied types of internal legal work in the several departments and other agencies seem likely in any event to remain in their respective hands.

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[72] See U.S. Code, Title 45, sec. 6.

[73] See U.S. Code, Title 45, sec. 63.

Since resistance to Department of Justice control of litigation is greatest in independent regulatory commissions and government corporations, the subject involves questions as to the position of these establishments in the government. The commissions are not likely to be affected directly by current plans for government reorganization, because of exemptions provided for in the act.[74] No other measure now on the horizon seems likely to bring about any drastic change. Only one government corporation, on the other hand, is exempt from reorganization under the present measure. Presumably it would be possible, therefore, to transfer to the Department of Justice full control of the litigation of these corporations. Presumably the status of the three new agencies created under the statute[75] is identical with that of other purely executive agencies, the litigation of which is managed by the Department of Justice. Since some government corporations have been transferred to these agencies, a new executive order may be necessary to clarify the subject.

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[74] Public No. 19, 76th Cong., 1st sess.

[75] See *Cong. Rec.* (daily edition), April 25, 1939, pp. 6576–6581.

THE NATURE OF NATIONALISM

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I

Nationalism as we understand it is not older than the second half of the eighteenth century. Its first great manifestation was the French Revolution, which gave the new movement an increased dynamic force. Nationalism had, however, become manifest at the end of the eighteenth century almost simultaneously in a number of widely separated European countries. Its time in the evolution of mankind had arrived, and although the French Revolution was one of the most powerful factors in its intensification and spread, it was not its date of birth. Like all historical movements, nationalism has its roots deep in the past. The conditions which made its emergence possible had matured during centuries before they converged at its formation. These political, economic, and intellectual developments took a long time for their growth and proceeded in the various European countries at different pace. It is impossible to grade them according to their importance or to make one dependent upon the other. All are closely interconnected, each reacting upon the other; and although their growth can be traced separately, their effects and consequences cannot be separated otherwise than in the analysis of the scholar; in life, they are indissolubly intertwined.

Nationalism is inconceivable without the ideas of popular sovereignty having preceded—without a complete revision of the position of ruler and ruled, of classes and castes. The aspect of the universe and of society had to be secularized with the help of a new natural science and of natural law as understood by Grotius and Locke. The traditionalism of economic life had to be broken by the rise of the third estate, which was to turn the attention away from the royal courts and their civilization to the life, language, and arts of the people. This new class found itself less bound by tradition than the nobility or clergy; it represented a new force striving for new things; it was ready to break with the past, flaunting tradition, in its opinions even more than it did in reality. In its rise, it claimed to represent not only a new class and its interests, but the whole people. Where the third estate became powerful in the eighteenth century, as in Great Britain, in France, and in the United States, nationalism found its expression predominantly, but never exclusively, in political and economic changes. Where, on the other hand, the third estate was still weak and only in a budding stage in the eighteenth and at the beginning of the nineteenth century, as in Germany, Italy, and among the Slavonic peoples, nationalism found its expression predominantly in the cultural field. It was there at the beginning not so much the nation-state as the *Volksgeist* and its manifestations in literature and folk-lore, in the mother tongue and in history, which became the center of the attention of nationalism. With the growing strength of the third estate, with the political and cultural awakening of the masses, this cultural nationalism, however, in the course of the nineteenth century, soon turned into desire for the formation of a nation-state.

The growth of nationalism is the process of integration of the masses of the people into a common political form. Nationalism therefore presupposes the existence, in fact or as an ideal, of a centralized form of government over a distinct and large territory. This form was created by the absolute monarchs, who were the pace-makers of modern nationalism; the French Revolution inherited and continued the centralizing tendencies of the kings, but at the same time it filled the central organization with a new spirit and gave it a power of cohesion unknown before. Nationalism is unthinkable before the emergence of the modern state in the period from the sixteenth to the eighteenth centuries. Nationalism accepted this form, but changed it by animating it with a new feeling of life and with a new religious fervor.

For its composite texture, nationalism used, in its growth, some of the oldest and most primitive feelings of man which throughout history we find as important factors in the formation of social groups. There is a natural tendency in man—and we mean by "natural tendency" a tendency which, having been produced by social circumstances since time practically immemorial, appears to us as natural—to love his birthplace or the place of his childhood sojourn, its surroundings, its climate, the contours of hills and valleys, of rivers and trees. We are all subject to the immense power of habitude, and even if in a later stage of development we are attracted by the unknown and by change, we delight to come back and be at rest in the reassuring sight of the familiar. Man has an easily understandable preference for his own language as the only one which he thoroughly understands and in which he feels at home. He prefers native customs and native food to alien ones, which appear to him unintelligible and undigestible. Should he travel, he will return to his chair and his table with a feeling of relaxation and will be elated by the joy of finding himself again at home, away from the strain of a sojourn in foreign lands and contact with foreign peoples.

Small wonder that he will take pride in his native characteristics, and that he will easily believe in their superiority! As they are the only ones in which civilized people like himself can apparently feel at home, are they not the only ones fit for human beings? On the other hand, contact with alien men and alien customs, which appear to him strange, unfamiliar, and therefore threatening, will arouse in him a feeling of distrust of everything foreign. This feeling of strangeness will again develop in him sentiments of superiority, and sometimes even of open hostility. The more primitive men are, the stronger will be their distrust of strangers, and therefore the intensity of their group feeling. Rudyard Kipling, in his poem, "The Stranger," gives forceful expression to this general feeling.

The Stranger within my gate,
He may be true or kind,
But he does not talk my talk—
I cannot feel his mind.
I see the face and the eyes and the mouth,
But not the soul behind.

The men of my own stock
They may do ill or well,
But they tell the lies I am wonted to,
They are used to the lies I tell.
We do not need interpreters
When we go to buy or sell.

The Stranger within my gates,
He may be evil or good,
But I cannot tell what powers control—
What reasons sway his mood;
Nor when the Gods of his far-off land
May repossess his blood.

These feelings always existed. They do not form nationalism. They correspond to certain facts—territory, language, common descent—which we also find in nationalism. But here they are entirely transformed, charged with new and different emotions, and embedded in a broader context. They are the natural elements out of which nationalism is formed. But nationalism is not a natural phenomenon, not a product of "eternal" or "natural" laws; it is a product of the growth of social and intellectual factors at a certain stage of history. It may be said that some feeling of nationality existed before the birth of modern nationalism, a feeling varying in strength and in frequency from time to time, at some epochs almost completely extinguished, at others more or less clearly discernible. But it was largely unconscious and inarticulate. It did not influence the thought and actions of men in a deep and all-pervading way. It found a clear expression only occasionally in individuals, and in groups only at times of stress or provocation. It did not permanently or in the long run determine their aims or actions. It was no purposeful will welding together all the individuals into a unity of emotions, thoughts, and actions.

Before the age of nationalism, the masses very rarely became conscious of the fact that the same language was spoken over a large territory. In fact, it was not even the same language; the several dialects existed side by side, sometimes even incomprehensible to the man of a neighboring province. The spoken language was accepted as a natural fact. It was in no way regarded as a political or cultural factor, still less as an object of political or cultural struggle. During the Middle Ages, people deduced from the Bible that as mankind was one, it should have one common language, and that the diversity of languages was the result of the sinfulness of man, and God's punishment at the time of the building of the Tower of Babel. Consciousness of language was aroused only at times of expeditions and travel or in frontier districts. There, the alien character of the group speaking the alien language was felt, and many names of what we today call national groups derive from the fact that they were first recognized as different groups by those of alien tongue. Some of these national groups even received their names from outside, because they were felt to be a distinct group by an outsider sooner than by a member of the group. The Greek word *barbaros,* which means "strange" or "foreign," and in consequence "rude" and "ignorant," probably has its source in the idea of stammering or inability to speak in a comprehensible way—a word akin to the Sanskrit expression *barbara*, which meant stammering or non-Aryan. The Slavs called the Germans with whom they came into contact *niemci*, which means the "mutes"—people who cannot make themselves understood. A man speaking an incomprehensible tongue seemed outside the pale of civilization. But language was accepted by the Slavs and by other peoples as a natural fact, not as a cultural inheritance. The language in which the treasures of civilization were inherited and transferred was generally, in medieval Europe as well as in Islam, in India as well as in China, not the language spoken by the people. It was a learned language accessible only to the educated class. Even if it was not a language of different origin from the vernacular, it was generally very different from the spoken language, and on account of its many purely literary, classical associations, was understood by only a small minority.

Before nationalism, language was very rarely stressed as a fact on which the prestige and power of a group depended. Alien languages remained until the very last centuries the languages used by official bodies, in the scholarly world, or among the upper classes. To mention only one fact which stands for a large number: the Breton estates, which were very jealous of their independence, nevertheless spoke French, and in the Act of Union for the Defense of the Liberties of Brittany of 1719 the Breton spokesmen did not mention language grievances. The translations of the Bible in Protestant countries were not undertaken from any motives of nationalism, but purely for the spreading of the true religion. Queen Elizabeth had the Bible and the Prayer Book translated into Welsh, and divine service held in Welsh, to liberate the Welsh from the "ignorance of popery." With the growth of nationalism in the following centuries, still dominated by religion but already harboring the seeds of the new growth, the translations of the Bible certainly were effective in arousing national feeling and in giving a new importance to the national languages, which through the spread of popular education and through the wider use of the printing press, became more and more an element of growing cultural importance. At the same time, the language became uniform, obliterating the vernacular dialects or pushing them into the background, and covering a broader territory as its undisputed domain.

This larger territory became an object of love to its inhabitants only as a result of a long and difficult process. Again this love of the homeland, which is regarded as the heart of patriotism, is not a "natural" phenomenon, but an artificial product of historical and intellectual development. The homeland which a man "naturally" loves is his native village or valley or city, a small territory well known in all its concrete details, abounding in personal memories, and in which his life is generally lived throughout its whole span. The whole territory inhabited by what we should consider today as a nationality, a territory frequently distinguished by great diversity of landscape and climate, was practically unknown to the average man, and could become known only by instruction or travel, which before the age of nationalism were limited to a very small minority. Voltaire, who lived before this age, pointed out that "plus cette patrie devient grande, moins on l'aime, car l'amour partagé s'affaiblit. Il est impossible d'aimer tendrement une famille trop nombreuse qu'on connait à peine."

Nationalism is not, as some scholars under the influence of Aristotle suggest,[1] a harmonious natural growth qualitatively identical with love for family and home. It is frequently assumed that man loves in widening circles—his family, his village, his tribe or clan, the nation, and finally humanity and the supreme good. But love of home and family is a concrete feeling, accessible to everyone in daily experience. Nationalism, and in an even higher degree cosmopolitanism, is a highly complex and originally abstract feeling which gains the emotional warmth of concreteness only through the effects of an historical development which, by education, economic interdependence, and corresponding political and social institutions, brings about the integration of the masses and their identification with a body far too great for any concrete experience. Nationalism—our identification with the life and aspirations of uncounted millions whom we shall never know, with a territory which we shall never visit in its entirety—is qualitatively different from the love of family or of home surroundings. It is qualitatively akin to the love of humanity or of the whole earth. Both belong to what Nietzsche called, in *Thus Spoke Zara-*

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[1] Aristotle understood by "state," or "fatherland," something that could easily be felt as a reality in everyday concrete contacts. He therefore believed that a state should consist of not less than ten, and of not more than ten thousand, inhabitants. (*Ethics*, IX, 10, 3. The great barbarian empires were for him no real states. *Politics*, VII, 4.)

thustra, Fernstenliebe, and which he distinguished from the *Nächstenliebe.*[2]

Life in a common territory, subject to the same influences of nature and, to an important although lesser degree, to the same influences of history and legal systems, produces certain common attitudes and traits which are often called national character. We find in the literature of all peoples throughout history frequent characterizations of national groups like the Gauls or the Greeks, the Germans or the English. Some of these traits seem to persist for a long time, and are mentioned by observers in different centuries. Other traits seem to change under the influence of historical developments. There are known instances where what was considered at a certain time the most essential character trait of a nation changed after a few decades. In the beginning of the eighteenth century, the English were considered a nation most inclined to revolution and to change, whereas the French were considered a most stable and stolid nation. In the first half of the eighteenth century, Voltaire could voice the general consensus about the English: "The French are of the opinion, that the government of this island is more tempestuous than the sea which surrounds it, which indeed is true." One hundred years later, quite the opposite opinion about the English and about the French was generally held. The English were then, and are even today, considered (and consider themselves) a stolid nation, proud in their disinclination to revolution; while the French were considered a people easily given to and delighting in revolutionary upheavals.

A similar change was produced in opinion about the Germans. One hundred years ago, they were thought a most impractical people, fit for metaphysics and music and poetry, but unfit for modern industry and business. They were then the object of a loving admiration and of a somewhat condescending benevolence on the part of the more practical, and therefore more powerful, peoples. One hundred years later, the Germans were producing very few, if any, metaphysicians, musicians, or poets of renown, but on the other hand had become most successful and practical adepts of modern industry and business. The attitude towards them changed correspondingly. The Mongols were once, under Genghis Khan, warriors famous for their belligerent character, and brought all Asia and half of Europe under their yoke. In the sixteenth century, through the adoption of Lamaist Buddhism, their old spirit was completely broken and they were turned into peaceful and pious men. Under the influence of the Soviet government and its revolutionary propaganda, however, the wild instincts of the race have been reawakened; and a new and different consciousness has started to animate the Mongol people and to break their religious inhibitions.

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[2] Robert Michels has remarked that the *Fernstenliebe* extends from patriotism to internationalism. "Denn Patriotismus und Internationalismus haben das Merkmal physischer Kontaktlosigkeit der sie Empfinden denzu den Mitempfindenden gemeinsam." *Der Patriotismus; Prolegomena zu seiner soziologischen Analyse* (Munich, 1929), p. 88. Patriotism and internationalism are, or can be, the product of an historical development and of indoctrination by education.

The judgments of observers concerning the character of national groups are, to a varying degree, colored by the political exigencies of the situation or the sentimental attitudes of the author. It seems extremely doubtful whether any judgment about a permanent national character of a people has any scientific value. Between the extremes which may be illustrated by a statement of John Morley that "in the literature of any people we perceive under all contrasts of form produced by variable social influences the one national character from first to last," and the opposite by J. M. Robertson that "the nation considered as a continuous and personalized organism is in large measure a metaphysical dream," we may accept the position of Sir Francis Galton that "different aspects of the multifarious character of man respond to different calls from without, so that the same individual, and much more the same race, may behave very differently at different epochs." Men and men's character are extremely complex, the more so, the less primitive man is. This holds true even more of a highly complex group like a nation. An immense diversity of individuals goes into making up a nation, and during the life-span of a nation the most diverse influences are exercised upon it, molding and transforming it. For growth and change are the laws under which all historical phenomena fall.

II

Nationalism is first and foremost a state of mind, an act of consciousness, which since the French Revolution is becoming more and more common to mankind. The mental life of man is as much dominated by an ego-consciousness as it is by a group-consciousness. Both are complex states of mind at which we arrive by experiences of differentiation and opposition, of the ego and the surrounding world, of the we-group and those outside the group. The collective or group consciousness can center around entirely different groups, of which some have a more permanent character, like the family, the class, the clan, the caste, the village, the sect, the religion, etc., whereas others are of a more or less passing character, e.g., schoolmates, a football team, or passengers on a ship. In each case, varying with its permanence, this group-consciousness will strive toward creating homogeneity within the group, a conformity and likemindedness which will lead to and facilitate concerted action. In that sense, we may speak of a group-mind and a group-action. We may speak of a Catholic mind and Catholic action, of an English mind and English action, but we may also speak of a rural mind or an urban mind, and of action of rural groups or urban groups. All these groups develop their group character. The character of an occupational group, as peasants, soldiers, civil servants, may be as clearly defined and stable as, or even more than, any character of a national group. Each group creates its own symbols and social conventions, is dominated by social traditions, which find their expression in the public opinion of the group.

Group consciousness is never exclusive. Men find themselves members of different groups at the same time. With the growth of the complexity of civilization, the number of groups of which men find themselves a part generally increases. These groups are not fixed. They have changing limits, and they are of changing importance. Within these pluralistic, and sometimes conflicting, kinds of group-consciousness there is generally one which is recognized by a man as the supreme and most important, to which therefore, in the case of conflict of group-loyalties, he owes supreme loyalty. He identifies himself with the group and its existence, frequently not only for the span of his life, but for the continuity of his existence beyond this span. This feeling of solidarity between the individual and the group may go, at certain times, as far as complete submergence of the individual in the group. The whole education of the members of the group is directed toward a common mental preparedness for common attitudes and common actions.

In different periods of history, and in different civilizations, we find different groups to which this supreme loyalty is given. The modern period of history, which started with the French

Revolution, is characterized by the fact that in this period, and in this period alone, the nation demands the supreme loyalty of man, that all men, not only certain individuals or classes, are drawn into this common loyalty, and that all civilizations which up to this modern period have followed their own, and frequently widely different, ways are now dominated more and more by this one supreme group-consciousness, nationalism.

It is a fact often commented upon that this growth of nationalism and of national sectionalism happened in the nineteenth and twentieth centuries, just at the time when a growth of international relations, trade, and communications developed as never before; that local languages were raised to the dignity of literary and cultural languages just at the time when it seemed most desirable to efface all differences of language by the spread of world languages. This view overlooks the fact that it was this very growth of nationalism all over the earth, with its awakening of the masses to participation in political and cultural life, that prepared the way for the closer cultural contacts of all the civilizations of mankind, now for the first time brought into a common denominator, which at the same time separated and united them.

Nationalism as a group-consciousness is therefore a psychological and a sociological fact, but any psychological or sociological explanation is insufficient. An American psychologist defined a nation as "a group of individuals that feels itself one, is ready within limits to sacrifice the individual for the group advantage, that prospers as a whole, that has groups of emotions experienced as a whole, each of whom rejoices with the advancement and suffers with the losses of the group . . . Nationality is a mental state or community in behavior."[3] This definition is valid, as far as it goes, not only for the nation, but for any other supreme group to which man owes loyalty and with which he identifies himself. It is therefore not sufficient to distinguish the national group from other groups of similar importance and prominence.

Nationalities are the product of the historical development of society. They are not identical with clans, tribes, or folk-groups—groups of men united by actual or supposed common descent or by a common habitat. Ethnographic groups like these existed throughout history, from earliest times on; yet they do not form nationalities; they are nothing but "ethnographic material," out of which, under certain circumstances, a nationality might arise. Even if a nationality arises, it may disappear again, absorbed in a larger or new nationality. Nationalities are products of the living forces of history, and therefore always fluctuating, never rigid. Nationalities are groups of very recent origin, and therefore of utmost complexity. They defy exact definition. Nationality is an historical and a political concept, and the meaning of the words "nation" and "nationality" has undergone many changes. The words used before the nineteenth century denoted something very different from the modern meanings in the age of nationalism. It is only in recent history that man started to regard nationality as a center of his political and cultural activity and life. Nationality is therefore nothing absolute, and the greatest mistake, responsible for most of the extremities of today, is to make it an absolute, an objective *a priori* which is a source of all political and cultural life.

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[3] W. B. Pillsbury, *The Psychology of Nationality and Internationalism* (New York, 1919), p. 5. The last chapter of this book is especially worthy of attention.

Nationality has been raised to an absolute by two fictitious concepts which have been accepted as having real substance. One holds that blood or race is the basis of nationality, and that it exists eternally and carries with it an unchangeable inheritance; the other sees the *Volksgeist* as an ever-quelling source of nationality and all its manifestations. These theories offer no real explanation of the rise and the rôle of nationality; they refer us to mythical, pre-historical pseudo-realities. Rather, they must be taken as characteristic elements of thought in the age of nationalism, and are subject themselves to analysis by the historian of nationalism.

III

Nationalities come into existence only when certain objective bonds delimit a social group. These bonds are most frequently used for the definition of nationality. None, however, is essential for the existence of a nationality. A nationality generally possesses several of these attributes; very few possess all of them. Usually, the following attributes are enumerated: common descent, language, territory, political entity, customs and traditions, and religion. A short discussion will suffice to show that none of these attributes is essential for the existence or definition of nationality.

Common descent seemed of great importance to primitive man, for whom birth was as great a mystery as death, and therefore surrounded by legends and superstitions. Most modern nationalities, however, are mixtures of different, and sometimes even very distant, races. The great migratory movements of history and the mobility of modern life have led everywhere to an intermingling, so that few if any nationalities can at present claim anything approaching common descent.

The importance of language for the formation and life of a nationality was stressed by Herder and Fichte. But there are many nationalities that have no language of their own, as the Swiss, who speak four different languages, or the Latin American nationalities, all of which speak Spanish or Portuguese. The English-speaking nations—Great Britain, the United States, Canada—or the Spanish-speaking nations of Latin America, are mostly of common or similar descent, speak the same language, and had until quite recently the same historical background, also traditions and customs very much akin to each other; yet they represent different nationalities, with frequently conflicting aspirations. Another example of the comparative irrelevance of objective criteria for their formation and continued existence is to be found in Norway and Denmark, where the people are most probably of common racial stock and speak almost the same language. Nevertheless, they consider themselves two nationalities, and the Norwegians set up their own language only as the result of their having become a nationality.

Customs and traditions were first stressed in their importance for nationalities by Rousseau. Each nation undoubtedly possesses its customs, traditions, and institutions; but these often vary greatly from locality to locality, and on the other hand tend in our times to become standardized all over the world, or at least over large areas. Customs and manners nowadays often change with great rapidity.

Religion was a great dominating force before the rise of nationalism in modern times. This is true of Western as well as Eastern Christianity, of Islam, and of India. The dividing lines were not drawn according to nationalities. Therefore the rise of nationalities and of nationalism was accompanied by transformations in the religious attitude of men, and in many ways the growth of nationalities has been helped or hindered by the influence of religion. Religious differences sometimes divided and weakened nationalities, and even helped to create new nationalities, as in the case of the Catholic Croats and the Orthodox Serbs. On the other hand, national churches have frequently been an important element in helping to arouse nationalism; and when conflicting nationalities were of different religions, religion often played a large part in the defense mechanism of the weaker nationality, as did Catholicism in Ireland and in Prussian Poland.

The most important outward factor in the formation of nationalities is a common territory, or rather the state. Political frontiers tend to establish nationalities. Many new nationalities, like the Canadian, were formed entirely because they comprised a political and geographic entity. Generally we may say, for reasons which will be considered later, that statehood or nationhood (in the generally accepted sense of common citizenship under one territorial government) is a constitutive element in the life of a nationality. The condition of statehood need not be present when a nationality originates, but in such a case (as with the Czechs in the late eighteenth century) it is always the memory of a past state and the aspiration toward statehood that characterizes nationalities in the period of nationalism.

Although it may be said in conclusion that some of these objective factors are of great importance for the formation of nationalities, the most essential element is a living and active corporate will. Nationality is formed by the decision to form a nationality. Thus the French nationality was born of the enthusiastic manifestation of will in 1789. A French nation, the population of the French kingdom, existed before, as also existed some of the objective conditions necessary for the formation of a nationality. But only the newly aroused consciousness and will made these elements active and effective, fused them into a source of immense centripetal power, and gave them a new importance and meaning. The English and American nationalities were constituted by covenants, by free acts of will, and the French Revolution evolved the plebiscite as a result of which membership in a nationality was determined, not by objective characteristics, but by subjective declaration. The foundation of the Swiss nationality was dramatized by Friedrich Schiller, in his *Wilhelm Tell* according to legendary tradition, into the famous oath on the Rütli: "Wir wollen sein ein einig Volk von Brüdern." This mythical declaration, "we wish to be one single nation of brothers," was uttered at the birth of every nationality, be it that this birth happened, after a long pregnancy, in the enthusiasm of a revolutionary period, or be it that the awakening of the masses took many years of ceaseless propaganda. Nationalities as "ethnographic material," as "pragmatic" and accidental factors in history, existed for a very long time; but only through the awakening of national consciousness did they become volitional and "absolute" factors in history. The extensive use of the word "nationality" must not blind us to the fact that the lack of this voluntary element makes what are sometimes called nationalities before the rise of modern nationalism something fundamentally different from nationalities at the present time. To base nationality upon "objective" factors like race implies a return to primitive tribalism. In modern times, it was the power of an idea, not the call of blood, that constituted and molded nationalities.

Nationalities are created out of ethnographic and political elements by nationalism breathing life into the form built by preceding centuries. Thus nationalism and nationality are closely interrelated. Nationalism is a state of mind, permeating the large majority of a people and claiming to permeate all its members, which recognizes the nation-state as the ideal form of political organization and the nationality as the source of all creative cultural energy and of economic well-being. The supreme loyalty of man is therefore due to his nationality, as his own life is supposedly rooted in and made possible by its welfare. A short discussion of the components of this definition will help to clarify the issues involved.

A state of mind of the large majority of the people: Even before the age of nationalism, we find individuals who profess sentiments very much akin to nationalism. But these sentiments are confined to individuals; the masses never feel their own life, culturally, politically, or economically, dependent upon the fate of the national group. Periods of oppression or danger from the outside may arouse in the masses a feeling of nationalism, as happened in Greece during the Persian wars and in France during the Hundred Years' War. But these sentiments pass quickly. As a rule, wars before the French Revolution did not arouse a deep national sentiment. In religious and dynastic wars, Germans fought against Germans and Italians against Italians without any realization of the "fratricidal" nature of the act. Soldiers and civilians entered the services of "foreign" rulers and served them, often with a loyalty and faithfulness which proved the absence of any national sentiment.

The nation-state as the ideal form of political organization: That political boundaries coincide with ethnographic or linguistic frontiers is a demand of recent times. Formerly, the city or the fief or a multi-lingual state held together by dynastic ties was the accepted form of political organization, and frequently was regarded as the "natural" or ideal form. At other periods, the educated classes as well as the masses believed in the ideal of a universal world-state, although on account of the technical and geographic conditions this ideal never approached realization.

The nationality as the source of cultural life: During most of historical time, religion was regarded as the true source of cultural life. Man was thought to become creative by his profound immersion in religious tradition and by his abandonment into the divine fountain-head of all being. At other times, the basis of man's education was steeped in the civilization of a class which spread beyond all national boundaries, like the civilization of knighthood in mediaeval Europe or of the French court in the seventeenth and eighteenth centuries. During and after the Renaissance, man's education was rooted in the soil of classical civilization. Education and learning, the formation of man's mind and character, were not bound by any national limits.

The nationality as a source of economic well-being: This phase of nationalism was, as well as the political, prepared by the period of absolute monarchy, with its mercantilism. But mercantilism never became more than a scheme imposed from above, trying to achieve a national unity which it in reality never approached, continuing in many ways the mediaeval confusion and disruption of economic life and leaving provinces, cities, and villages as centers of economic life. The purpose of mercantilism was to strengthen the state and its power in international politics. The system following mercantilism, in the period of laissez-faire, had as its aim the promotion of individual welfare. Economic nationalism brought about a neo-mercantilism, filling with life, as had been the case with the centralized state, the form erected by the monarchs. It is a much younger development than political or cultural nationalism, and it believes that the well-being of the individual can be achieved and secured only by the economic power of the nation. The close political and cultural identification of the individual with his nationality which took place at the end of the eighteenth and beginning of the nineteenth century, extended to the economic field during the latter part of the nineteenth century.

The supreme loyalty due to the nationality: The Austrian monarchy was generally accepted as long as man's supreme loyalty was due to the legitimate king; its existence became precarious with the shift of loyalty from the dynasty to the nationality. Only a very few centuries ago, man's loyalty was due to his church or religion; a heretic put himself out of the pale of society in the same way that a "traitor" to his nation does today. The fixation of man's supreme loyalty upon his nationality marks the beginning of the age of nationalism.

IV

Nationalism is a state of mind. The process of history can be analyzed as a succession of changes in communal psychology, in the attitude of man toward all manifestations of individual and social life. Such factors as language, territory, traditions—such sentiments as attachment to the native soil, the *Heimat,* and to one's kin and kind—assume different positions in the scale of values as communal psychology changes. Nationalism is an idea, an *idée-force,* which fills man's brain and heart with new thoughts and new sentiments, and drives him to translate his consciousnes into deeds of organized action. Nationality is therefore not only a group held together and animated by common consciousness; it also seeks to find its expression in what it regards as the highest form of organized activity, a sovereign state. As long as nationality is not able to attain this consummation, it satisfies itself with some form of autonomy or pre-state organization, which, however, always tends at a given moment, the moment of "liberation," to develop into a sovereign state. Nationalism demands the nation-state; the creation of the nation-state strengthens nationalism; here, as elsewhere in history, we find a continuous interdependence and interaction.

"Nationality is a state of mind corresponding to a political fact,"[4] or striving to correspond to a political fact. This definition reflects the genesis of nationalism and of modern nationality. Modern nationality was born in the fusion of a certain state of mind with a certain political form. The state of mind, the idea of nationalism, imbued the form with a new content and meaning; the form provided the idea with the implements for the organized expression of its manifestations and aspirations. The idea and the form of nationalism were developed before the age of nationalism. The idea goes back to the ancient Hebrews and Greeks, and was revived in Europe at the time of the Renaissance and the Reformation. During the period of the Renaissance, the *literati* rediscovered Greco-Roman patriotism, but this new attitude never penetrated to the masses, and its secularism was soon swept away by the re-theologization of Europe through the Reformation and Counter-Reformation. But the Reformation, especially in its Calvinistic form, revived the nationalism of the Old Testament. Under the favorable circumstances which had developed in England, a new national consciousness of England as the godly people penetrated the whole nation in the revolution of the seventeenth century. Meanwhile a new political power—that of the absolute kings—had developed a new political form, the modern centralized sovereign state, which became the political form into which, during the French Revolution, the idea of nationalism was infused, thus filling that form with a consciousness in which all citizens could share, and making possible the political and cultural integration of the masses in the nation. With the advent of nationalism, the masses were no longer in the nation, but of the nation. They identified themselves with the state, civilization with national civilization, their life and survival with the life and survival of the nationality. Nationalism thenceforward dominated the impulses and attitudes of the masses, and at the same time served as the justification for the authority of the state and the legitimation of its use of force, both against its own citizens and against other states.

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[4] Israel Zangwill, *The Principle of Nationalities* (London, 1917), p. 39. Max Weber defines nationality as "a common bond of sentiment whose adequate expression would be a state of its own, and which therefore normally tends to give birth to such a state." *Verhandlungen des Zweiten Deutschen Soziologentages* (Tübingen, 1913), p. 50.

Sovereignty has a two-fold significance. One aspect has to do with the relations of the state to its citizens, the other with the relations between state and state. Similarly, the sentiment of nationalism is double-faced. Intranationally, it leads to a lively sympathy with all fellow-members within the nationality; internationally, it finds its expression in indifference to or distrust and hate of fellowmen outside the national orbit. In intranational relations, men are guided not only by supposedly permanent common interests, but also by sentiments of sympathy, devotion, and even self-sacrifice, which the whole tends to intensify. In their international relations, they are guided by the supposed lack of permanent common interests between different states and by sentiments which vary from the point of complete indifference to the most bitter antipathy, and are subject to swift changes within that range. Nationality, which is nothing but a fragment of humanity, tends to set itself up as the whole.[5] Generally this ultimate conclusion is not drawn, because ideas pre-dating the age of nationalism continue to exercise their influence. These ideas form the essence of Western civilization, of Christianity as well as of enlightened rationalism, the faith in the oneness of humanity and the ultimate value of the individual. Only fascism, the uncompromising enemy of Western civilization, has pushed nationalism to its very limit, to a totalitarian nationalism in which humanity and the individual disappear and nothing remains but the nationality, having become the one and the whole.

V

Important periods of history are characterized by the circumference within which the sympathy of man extends. These limits are neither fixed nor permanent, and changes in them are accompanied by great crises. In the Middle Ages, the people of the Île de France felt a violent antipathy and contempt for the people of Aquitaine or of Burgundy. A very short time ago, a similar feeling existed in Egypt between the Mohammedans and the Copts, or native Christians. In ancient times, the Athenians hated and despised the Spartans. Almost unscalable barriers separated members of rival religious sects within a community. In China, until very recently, the family set the limit of sympathy, and very little if any loyalty and devotion were left for the nation or larger social group.

Beginning with the nineteenth century in the Western world, with the twentieth century in the Orient, the circumference was set by the nationality. These changes involved in many cases the establishment of new dividing lines. This grouping of men into

[5] "The spirit of nationality may be defined (negatively but not inaccurately) as a spirit which makes people feel and act and think about a part of any given society as though it were the whole of that society." Arnold J. Toynbee, *A Study of History* (London, 1934), Vol. 1, p. 9.

new forms of organization, their integration around new symbols, gained a momentum unknown in former days. The rapid growth of population, the spread of education, the increased influence of the masses, the new techniques developed for information and propaganda, gave the new feeling of nationality a permanent intensity which soon made it appear the expression of something "natural," of something which had always existed and would always exist. But there is no assurance that the circumference of sympathy will forever remain drawn as it is today. With the transformation of social and economic life, with the growing interdependence of all nationalities, on a shrinking earth, with a new direction to education, the circumference may widen to include supranational areas of common interest and common sympathy.

Such an extension of solidarity, should it come, will arise only as the result of a struggle of unprecedented dimensions. For nationalism represents "vested interests," not only political and economic, but also intellectual and emotional, of an intensity and extensity shown by no previous idea. In the face of the omnipotence of nationality, humanity seems a distant idea, a pale theory or a poetic dream, through which the red blood of life does not pulsate. And so it is. But at one time in history the French or the German nation was also nothing more than a dim idea. Historical forces, amid great struggles and convulsions lasting for a long period, brought these ideas to life. An organization of mankind was a utopia in the eighteenth century; the stage of development of state and economy, of technique and communication, was in no way adequate at that time to the task. It is far different today. At the present time, the sovereignty of nation-states to which we still cling threatens to plunge mankind into repeated catastrophes; nationalism, at its beginning a great and inspiring force, widening and deepening the understanding of man, the feeling of solidarity, the autonomous dignity of the masses, seems unable to cope with the new situation. Once it increased individual liberty and happiness; now it undermines them and subjects them to the exigencies of its continued existence, which is no longer justified. Once it was a great force of life spurring on the evolution of mankind; now it threatens to become a dead weight upon the march of humanity.

The German or the French nation is, no more than the American nation, an entity predestined by nature. They, as well as the national consciousness which animates them, are formed by historical forces. The growth of the German national consciousness, the formation of the German national state, encountered innumerable difficulties, and was again and again in danger of being wrecked on the cliffs of political vested interests, or of the inertia of traditions and of ingrained sectionalism and provincialism. The pioneers of nationalism were compelled many times to despair of achieving their goal. But nationalism was victorious. It was then a progressive principle, a great liberating force, filling the heart of man with great hope of a new freedom and of better and more humane relations between peoples. This has changed. "Political nationalism is under present conditions, and in so far as it aims at the creation of a multitude of uninational states, impossible. It is also undesirable. It conflicts with the main trends of human affairs, which are away from isolation towards interdependence. Nationalism is in politics a bitterly reactionary thing. Its aim is not service and coöperation, but exclusiveness and monopoly. The world needs, not more tariff walls and fortress-barriers, but fewer. The political problem of our day is two-fold. We have, on the one hand, to secure democracy, self-government; on the other, administrative areas which correspond to the social needs of our civilization."[6]

This criticism may be accepted today by a growing number of people. But nationalism is more strongly entrenched at present than it was a short time ago. The nation-state is more deep-rooted in the emotions of the masses than any previous political organization. The growth of nationalism has influenced historiography and the philosophy of history, and each nation has developed its own interpretation of history which not only makes it feel itself different from all other nationalities, but gives to this difference a fundamental, and even metaphysical, meaning. The nationality feels itself chosen for some special mission, and the realization of this mission essential to the march of history, and even to the salvation of mankind. By the identification of nation and state, for which the modern basis was prepared by Rousseau, the cultural and emotional life of the masses has become closely integrated with the political life. Any change of the principles of political organization will therefore encounter the strongest resistance, which will not take into account considerations of the rational and universal good, but will appeal to the vested traditions.

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[6] Sidney Herbert, *Nationality and Its Problems* (London, 1920), p. 161.

Sociologists have pointed out the intimate relation between national and religious movements. Both have an inspirational, and sometimes revivalist, character. "Both of them are fundamentally cultural movements with incidental political consequences."[7] We should not, however, term the political consequences incidental; rather, they have been conditioned by the stages of historical development. At a given time in history, religion, essentially a spiritual movement, had very fundamental and substantial political implications. Religion dominated politics. At the present time, the same is true of nationalism. When interminable and ferocious religious wars threatened to destroy human happiness and civilization, the movement of Enlightenment, the wave of rationalism which started about 1680 and dominated the eighteenth century, led to the depolitization of religion. By this process, religion did not lose its true dignity; it remained one of the great spiritual forces, comforting and exalting the human soul. It lost the element of coercion which had been so "natural" to it for many centuries; its connection with the state, with political authority, was severed; religion retreated into the intimacy and spontaneity of the individual conscience. The process of the depolitization of religion was slow. Two centuries from "The Bloudy Tenent of Persecution for Cause of Conscience Discussed in a Conference between Truth and Peace," published by Roger Williams in 1644, had to elapse before, at least in Western Europe, its consequences won general acceptance. A similar depolitization of nationality is conceivable. It may lose its connection with political organization, and remain only as an intimate and moving sentiment. If and when that day arrives, however, the age of nationalism, in the sense in which the term is here employed, will be past.

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[7] Robert E. Park and Ernest W. Burgess, *Introduction to the Science of Sociology* (Chicago, 1924), p. 931.

First Session of the Seventy-sixth Congress, January 3 to August 5, 1939. When the first session of the 76th Congress convened, demands for economy and a curtailment of presidential power and influence were rather prevalent in all parts of the country. The activities of the session were influenced by the 1940 election, coalition of parties to act on particular issues, fights between the Executive and Congress, partisan action, and many other political contrivances. In the face of all this, the National Legislature, according to many political observers, made a somewhat unpredictable record.

The two deliberative bodies were confronted with a very heavy program, and the House and Senate were in session 148 and 129 days respectively. Though belated in getting the business under way for passage,[1] the number of public and private laws and resolutions enacted totaled 719, as contrasted with 105, 840, and 899 in the first sessions of the 73rd, 74th, and 75th Congresses respectively.[2]

Appropriation measures and legislation directly authorizing appropriations for national defense comprised most of the work of the session. These measures were so extensive and involved such great sums of money that, within a few weeks after the session began, the hopes of the most optimistic proponents of economy had faded. The situation was best characterized in the Senate by Mr. King, who stated: "I know it is regarded as quite improper to question appropriation bills. The assumption is that whatever is asked for we grant, and sometimes regret is expressed that more was not asked for. I know that an objection to any item in an appropriation bill meets with opposition, and, of course, is futile."[3]

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[1] The committees had reported practically no legislation of any importance by the end of the first month of the session, though some appropriation measures had been reported. As late as February 2, Mr. Barkley, Senate floor leader, asked the membership to speed up committee reports; he said: "I suggest that all committees which have important legislation before them, having regard for proper deliberation and consideration of all such measures, act as promptly as possible to report such measures for the calendar, so that the Senate may not be required to adjourn from time to time for 3 days because there is nothing to do." *Cong. Rec.*, 76th Cong., 1st Sess., p. 1501. (Hereafter references to the *Record* will give only the page numbers.)

[2] A total of 8,254 bills and resolutions were introduced in the House during the first session of the 76th Congress, as contrasted with 6,558, 10,091, and 9,200 in the first sessions of the 73rd, 74th, and 75th Congresses respectively. The committees made reports on 1,471 bills, of which 517 were on private bills. The House acted on 1,328 of these reported bills; 143 of them had not been acted on at the close of the session. For a comparative analysis of all such data of the 1st session of the 76th Congress with those of the first session of the 73rd, 74th, and 75th Congresses, see *Calendars of the United States House of Representatives and History of Legislation* (final ed.), p. 183.

[3] P. 9840. Mr. Vandenburg, speaking to an appropriation bill (H.R. 6791) on

Membership. The membership of the 76th Congress as compared with that of the 75th was changed considerably, both as to persons and as to parties. At the beginning of the 75th, the Democrats in the Senate numbered 75, the Republicans 17, and others 4. In the House, the Democrats totaled 333, the Republicans 88, and others 14.[4] In the session here reviewed, the number of Democrats in the Senate was reduced to 69, while the Republicans numbered 23, with 4 others. In the House, the number of Democrats had been reduced to 262, while the Republicans had been increased to 169, with 4 others.[5] Thirteen new senators appeared in the Senate,[6] of whom 5 were Democrats and 8 Republicans. Six of the 8 Republicans replaced Democratic senators.[7] In the House, the newcomers totaled 117, a turnover of approximately 27 per cent.[8] No party changes occurred in 25 of the 48 states, with no Democrat replacing a Republican; but 32 new Democrats replaced old ones. The Republicans had been more successful. They succeeded in replacing 70 Democrats, 5 Progressives, 4 Farm Laborites (besides 5 of their own party). One American Laborite, of New York, was elected to replace a Democrat.

Since the 1938 election, 8 Representatives and 1 senator have died,[9] and 1 representative has resigned.[10] The election of James K. Polk of Ohio was contested, but his credentials were duly accepted on April 10.[11]

Organization. Due to the large majorities in both houses, the Democratic party had little difficulty with organization,[12] although the resulting machinery failed to assure complete control throughout the session. The major leaders of the prior Congress, with two exceptions in the House, succeeded themselves. Representative O'Connor, the former chairman of the Rules Committee, and Representative Snell,[13] the former minority floor

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June 29, said: "I repeat . . . that if the Senate could know the detail of the waste and exploitation which is wrapped up in some of these appropriation bills, even the blasé Senate would be shocked" (p. 11495).

[4] *Cong. Directory*, January, 1938, pp. 145–154.

[5] These figures are compiled from a list brought up to August 5.

[6] The 34 senators were elected or reëlected on November 8. The two senators elected on this date to fill unexpired terms were Mead of New York and Stewart of Tennessee.

[7] Democratic senators were succeeded by Republicans in the following six states: New Jersey, Connecticut, Kansas, Ohio, New Hampshire, and Wisconsin.

[8] Twelve of the 117 newcomers had already served in the House, one of whom (Darrow of Pa.) had served for 11 consecutive terms.

[9] They were: Senator J. Hamilton Lewis and Representatives Gambrill of Md., Cravens of Ark., Daly of Pa., Turner of Tenn., Lord of N. Y., Owen of Ga., Griswold of Wis., and McReynolds of Tenn.

[10] Goldsborough of Md.

[11] See House Resolution 156.

[12] There were 69 Democrats as opposed to 27 others in the Senate. In the House, the Democrats totaled 262, with only 173 others.

[13] Mr. O'Connor of N.Y. was defeated and Mr. Snell was not a candidate.

leader, were not reëlected to Congress. Representative Sabath became the new chairman of the Rules Committee and Representative Martin of Massachusetts became the new minority floor leader. All other major appointments in both houses[14] were determined as a matter of course. By a vote of 249 to 168,[15] Mr. Bankhead was formally elected Speaker over Mr. Martin, who was a candidate for Speaker "with the understanding that he would succeed himself as minority floor leader."

Neither party enjoyed victory throughout the whole session. The number of Republicans in both houses was too small to enable them to outvote the majority party, and often their hopes that non-conforming Democrats would join them in a vote were shattered when the majority party in fact voted on a particular issue almost solidly. On the other hand, while a controlling majority supported leaders Barkley and Rayburn throughout most of the session, sometimes a sufficient number of Democratic members, contrary to the will of the party machine, joined the Republicans in voting down the program of the majority party. This lack of party unity was the cause, perhaps, of so many Democratic caucuses; the hopes of success undoubtedly had an influence in determining the great number of Republican conferences.[16] The organizations around which the machines were built were as follows:

Office	*Democratic*		*Republican*	
	Senate	*House*	*Senate*	*House*
Vice-President	Garner (Tex.)			
Speaker		Bankhead (Ala.)		
President Pro Tempore	Pittman (Nev.)			
Floor Leaders	Barkley (Ky.)	Rayburn (Tex.)	McNary (Ore.)	Martin (Mass.)
Whips	Lewis (Ill.)[17]	Boland (Pa.)	Austin (Ver.)	Engelbright (Cal.)
Assistant Whips	Minton (Ind.)	Dockweiler (Cal.) (15 Dist. Whips)		
Chairmen of Rules Committees	Neely (W. Va.)	Sabath (Ill.)		
Chairmen of Caucuses	Barkley (Ky.)	McCormack (Mass.)	McNary (Ore.)	Woodruff (Mich.)
Steering Committee Chairmen	Barkley (Ky.)	Scrugham (Nev.)	(no committee)	Martin (Mass.)
Chairmen of Committees on Committees	(Steering Committee serves in this capacity)	Doughton (N.C.)	Nye (N.D.)	Martin (Mass.)

[14] Several changes took place in the Democratic Policy and Steering Committees of the Senate.

Legislative Activities. Of the grand total of 719[18] private and public laws and resolutions enacted, 400 were public bills, 264 private bills, 52 public resolutions, and 3 private resolutions.[19] The President vetoed 58[20] bills and 4 died in conference. Disagreements between the two houses as to the content of pieces of legislation necessitated the sending of 58 bills to conference.[21]

(1) *Appropriations.* The appropriation bills enacted, including the general appropriation measures,[22] were a very important routine of the session. According to the figures given out by Mr. Taylor, chairman of the House Appropriations Committee,[23] these bills involved a total appropriation of $13,349,020,562, which was $190,823,096 greater than the budget

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[15] Mr. Gehrmann and Mr. Hull were candidates for Speaker, receiving only one vote each.

[16] Unlike in the House, such meetings in the Senate are not called caucuses. While leaders Barkley and McNary were not formally elected as chairmen of their respective caucuses, they held a number of conferences on such issues as national defense, relief program, stabilization fund bill, and the like. In the House, many general conferences to determine policy and to reach decisions on particular issues were held. The Democrats held such a meeting on January 2, January 6, January 16, February 14, and July 28. The one of February 14 was a general conference to rally the torn forces. The Republicans held meetings on January 2, January 11, January 20, February 6, February 9, March 6, March 27, April 18, May 16, and July 28.

[17] After the death of Senator Lewis, Senator Minton became whip.

[18] Of the 719 bills and resolutions to become law, the rôle of initiation played by each house shows that 447 originated in the House and 272 in the Senate, divided as follows: House bills, 408; House joint resolutions, 39; Senate bills, 256; and Senate joint resolutions, 16.

[19] Each house played a more important rôle in legislative activity than the above figures show. The House actually passed 958 bills, as follows: 615 House bills, 279 Senate bills, 46 House joint resolutions, and 18 Senate joint resolutions. During the session, 8,254 bills and resolutions were introduced in the House. Of that number, 7,541 were House bills, 381 House joint resolutions, 35 House concurrent resolutions, and 297 House resolutions. In the Senate, 3,370 bills and resolutions were introduced. Of the number, 2,974 were Senate bills, 186 Senate joint resolutions, 29 Senate concurrent resolutions, and 181 Senate resolutions.

[20] House bills vetoed, 11; Senate bills vetoed, 7; House bills pocket vetoed, 22; Senate bills pocket vetoed, 18.

[21] Only 54 successfully went through conference, and 6 of these were vetoed.

[22] *Cannon's Procedure in the House of Representatives*, p. 22, lists the general appropriation bills as follows: 1. Agricultural, 2. District of Columbia, 3. Independent Offices, 4. Interior, 5. Legislative Establishment, 6. Navy, 7. State, Justice, Commerce, and Labor, 8. Treasury and Post Office, 9. Military, 10. War (civil functions), and 11. Deficiency bills.

[23] Mr. Taber, ranking minority member of the Appropriations Committee in the House, placed the total figure at $14,061,598,619, according to the following breakdown: Direct appropriations, $9,720,827,313; permanent appropriations, $3,619,934,916; re-appropriations, $232,416,332; and contract authorizations, $488,420,058. Mr. Taber said: "To my mind, an appropriation is an appropriation,

estimates, and exceeded the appropriations of the third session of the 75th Congress by $1,230,984,229.[24] Mr. Woodrum, of Virginia, assumed the heavy burden for the Democrats in the management of these bills by directing 11 of them through the House; Mr. Adams, of Colorado, directed the greatest number through the Senate.

The first part of the session was devoted mostly to the money bills, and the House had passed the greater number of them before April.[25] Some of them, however, were passed at an unusually late date. Finally, a few were driven through under pressure of realization that the fiscal year was terminating on June 30.[26] The District of Columbia Appropriation bill was not approved until after the end of the fiscal year. The Navy Appropriation bill was the only major money bill not sent to conference. The Agricultural and Relief appropriation bills occasioned the most discussion in the two bodies. The huge amounts placed in the "defense appropriation measures," the largest ever in a peace-time year, went through with hardly any opposition. In the House, the War Appropriation bill was debated half-heartedly for two days, divulging a minimum amount of constructive information; and then it was read, very hurriedly, under the five-minute rule for amendments (consuming one-half of a printed page) and passed. Immediately, Mr. Snyder, in charge of the bill in the House, took the floor to announce: "Mr. Speaker, this is the eve of the one hundred and fiftieth anniversary of the First Congress of the United States under the Constitution. May I take this occasion to congratulate the House and to thank my committee and my colleagues for their splendid coöperation in passing the first Army appropriation bill in 150 years without even an amendment being offered." Apparently, he

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whether you call it a 'reappropriation' or a 'direct appropriation.' It takes money out of the Treasury that could not get out in any other way. Therefore, I have always felt that reappropriations should be charged against the year's operations, and I have always included them in the tables that I have prepared, and I shall do so again this year. We are confronted with a new situation this year. Appropriation bills have been reduced to a certain extent below the budget estimates by means of contract authorizations, where the funds would not be required until well after the beginning of the next session of Congress, and in some cases not until after the first of next July. It has been customary heretofore to resort to a little of this practice, but in view of the fact that contract authorizations this year have been trebled over any previous year within my recollection, in order to present a fair picture of the operations of this session of Congress, I have felt that contract authorizations should also be shown" (p. 15660).

[24] For a complete breakdown as given by Mr. Taylor, see pp. 15682–15683.

[25] In the 68th Congress (convened in December), the House established a record by passing all of them by April 7.

[26] Four appropriation measures were not passed by the House until after June 22. Eight were acted on after June by the Senate. Many stayed a long time in conference.

overlooked the fact that one member tried in vain to offer an amendment which was ruled out of order on the ground that the section to which it was offered had been passed over (p. 3170).

The adjoining table affords a comparison of the budget estimates, the sums voted by each of the two houses, and the actual amounts appropriated, contrasted with the amounts appropriated by the corresponding acts of the third session of the 75th Congress. The exhibit shows that the Senate was disposed to be far more liberal in spending than the House.[27]

(2) *General Legislation.* This brief review of legislation does not include the 267 private acts approved during the session. Of the 452 public acts, those of chief importance may here be enumerated.

(1) The Revenue bill of 1939 (H.R. 6851) was first passed in the House[28] on June 19 by a vote of 357 yeas (206 Democrats, 147 Republicans, and 4 others), 1 nay (Republican). The Senate disposed of it on June 22 (pp. 10827–10850) after four hours of debate, without a record vote on passage. The LaFollette amendment to increase surtax rates on net taxables above $3,000 was lost by a vote of 38 yeas (23 Democrats, 11 Republicans, and 4 others), 38 nays (32 Democrats and 6 Republicans).[29] Eight committee amendments were added to the bill in the House (pp. 10488–10505) and 20 in the Senate, none of which was particularly significant. Only 4 or 5 of the Senate amendments, said Mr. Cooper, a member of the Ways and Means Committee, embody some degree of substance (p. 10964), and "they are considered of a rather minor nature." The bill was really so complicated that the congressmen were not qualified to amend it. When the bill was called up from the Speaker's table on the motion to concur (p. 10963) in the Senate amendments, Mr. Doughton added: "Mr. Speaker, a number of the amendments are highly technical. I asked Mr. Stam, our counsel, this morning to make a brief of some of the amendments, to explain them. It is difficult for anyone to understand them. I am sure the gentleman from Tennessee (Mr. Cooper) can come as near to doing that as anyone."[30]

The two major objectives of the measure are indicated in the House

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[27] Mr. Cannon said: "Mr. Speaker, in practically every appropriation bill that goes to the Senate, the Senate adds amendments increasing the amount carried by the bill. In the last 25 years I recall only one appropriation bill passed by the House which the Senate did not increase" (p. 8442).

[28] Pp. 10505–10506. The motion to recommit the bill was lost by 149 yeas (148 Republicans and 1 Democrat), 205 nays (201 Democrats and 4 others). These party analyses of the record votes in the House are subject to possible variations of 1 or 2 due to discrepancies between the roll at the time of voting and the final roll with which they were all checked. Only the Republicans and third parties were tabulated and subtracted from the total vote.

[29] P. 10841.

[30] Pp. 10960–10968. The Senate amendments were concurred in and the act was approved on June 29 (Public Law No. 155).

APPROPRIATIONS

Bills	75th Congress 3rd Session	76th Congress, 1st Session				
		Budget Estimates	As the Bill Passed House	As the Bill Passed Senate	Law	Increase or Decrease Compared with Estimates
Agric. and Farm Credit Admin.	$ 745,790,279	$ 841,446,051	$ 816,519,113	$1,218,666,572	$1,194,498,633	+353,052,582
District of Columbia	47,255,155	48,015,860	46,915,207	49,524,985	48,002,347	−13,513
Independent Offices	1,423,098,240	1,669,972,010	1,651,087,340	1,668,218,340	1,668,218,340	−1,753,670
Interior	129,678,460	176,822,593	159,838,815	174,975,288	172,679,765	−4,142,828
Labor	24,332,950	30,930,280	30,535,770	30,747,780	30,536,170	−394,110
Legislative	21,663,783	24,324,851	21,641,278	21,985,779	21,851,779	−2,473,072
Military Establishment	459,401,254	526,305,868	499,857,936	513,188,882	508,789,824	−17,516,044
Navy	546,866,494	790,342,453	773,420,241	773,049,151	773,049,151	−17,293,302
State, Justice, and Commerce	106,256,845	124,692,423	121,399,120	122,624,410	122,177,220	−2,515,203
Treasury and Post Office	1,403,683,526	1,728,397,492	1,700,591,354	1,701,189,114	1,700,615,054	−27,782,438
War, Civil Functions	196,962,867	255,634,454	305,188,514	305,267,984	305,188,514	+49,554,060
Total, Regular Acts	5,104,989,853	6,216,884,335	6,126,994,688	6,579,438,285	6,545,606,797	+328,722,462
First Deficiency	28,089,097	24,556,241	9,979,000	22,682,041	23,765,041	−791,200
Second Deficiency	275,403,369	163,760,837	139,871,028	165,662,864	157,619,059	−6,141,778
Third Deficiency		244,346,934	54,252,056	191,025,566	185,168,066	−59,178,867
Urgent Deficiency		3,392,445	2,669,377	3,224,377	3,099,377	−293,068
Supplemental Military		239,002,500	222,198,047	223,398,047	223,398,047	−15,604,453
Work Relief and Relief Bills	3,165,605,000	2,637,490,000	2,560,600,000	2,633,900,000	2,580,600,000	−56,890,000
Sundry Public Acts & Public Res.	70,406,650	4,046,400	4,046,400	4,046,400	4,046,400	
Misc. Private Relief Acts	1,174,532		1,000,000	1,000,000	1,000,000	+1,000,000
Grand Total	8,645,668,501	9,533,479,692	9,121,610,596	9,824,377,580	9,724,302,787	+190,823,096
Permanents and Indefinites	3,472,367,832	3,624,812,775	3,624,717,775	3,624,717,775	3,624,717,775	
Grand Total including Permanents and Indefinites	12,118,036,333	13,158,292,467	12,746,328,371	13,449,095,355	13,349,020,562	+190,823,096

report on the bill, as follows: "The first is to remove from the existing corporate income-tax structure such business deterrents and tax irritants as may be possible to consider at this time. Its second purpose is to extend the temporary excise taxes and the postal rates."[31]

(2) The Social Security Act of 1939 (H.R. 6635) was, Mr. Doughton, chairman of the Ways and Means Committee, said, "the most far-reaching and significant piece of legislation enacted at this session of the Congress[32] . . ." It was, he stated, "the result of the work of the Committee on Ways and Means, which began the 1st of February last. That Committee conducted hearings for about 50 days, during which approximately 2,500 pages of testimony were taken," and then the committee was in executive session for about 6 weeks (p. 9395). Mr. Treadway (p. 9808), ranking minority member of the same committee, said there was "no partisanship on the part of the members. We have all worked together to the best of our ability to give the country an act that will be in the best interest of the people." The measure, when completed, however, was very complex and technical. As stated by Mr. Taylor of Tennessee, " . . . It would take a Philadelphia lawyer to understand what is in the measure"; and "it would take a Philadelphia lawyer who had spent a good many months studying this bill if he were expected to give an intelligent opinion about it," added Mr. Robertson (p. 9406).

When the bill was read in the House for amendments, 43 amendments, not particularly significant, were offered to it, of which 4 by the committee were adopted. The 39 offered by "private members" were all voted down. The bill was passed in the House on June 10 (p. 9811) by a vote of 361 yeas, 2 nays (Republicans).

Senator Harrison, chairman of the Finance Committee, stated (p. 12350) that the provisions, due to the action by the Senate, "with reference to these old-age benefits have been immeasurably liberalized, and will be of inestimable benefit to that large portion of our population." The bill, with 182 Senate amendments (most of which were clerical), was passed in the Senate on July 13 by a vote of 57 yeas (45 Democrats, 8 Republicans, and 4 others), 8 nays (6 Republicans and 2 Democrats).[33] The conferees were in session over these differences for 21 days. "I have never known conferees," said one of them, "to work more assiduously, more unselfishly, or more determinedly to bring back to their respective Houses a report that would be worthy of the subject under consideration and would be the best possible solution of the points in disagreement between the two Houses."[34] In the conference (p. 15300), the House conferee receded in the case of 146 Senate amendments, the Senate receded in the case of 21, and 15 were compromised.

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[31] House Report 855, p. 1.

[32] P. 15837. Two other measures, immediately connected, which passed during the session are: H.R. 5474 (Railroad Unemployment Insurance) and H.R. 5482 (Unemployment Compensation). See p. 15653.

[33] P. 12637. The scope of the law includes the following titles: taxes; benefits; coverage; federal grants to states; maternal and child welfare, vocational rehabilitation; public health work; administration; old-age and survivors insurance; public assistance programs; unemployment compensation; and health and welfare service. See pp. 15837–15840.

(3) Reorganization bill (H.R. 4425): "For 50 years or more President after President has called attention of the Congress to the necessity of reorganizing the executive branch, the responsibility for which is charged to the President by the Constitution. As the country and Government activities have expanded, so has the executive branch of the Government until today we find approximately 135 departments and independent agencies. Within those departments and agencies there are approximately 500 bureaus."[35] In 1937, the House passed, by 283 yeas, 75 nays, a bill far more drastic than this one to correct and simplify the above situation. The bill was rewritten by the Senate, returned to the House, and recommitted.[36]

This bill (H.R. 4425) was reported to the House by a select committee,[37] and debated rather partisanly. It passed, however, practically as reported. Twenty-five amendments were offered in the House, but nearly all were defeated. The Sumners amendment, providing that the House or Senate acting separately should have power to block any plan submitted by the President was rejected (p. 3530) by 193 yeas (157 Republicans, 34 Democrats, and 2 others), 209 nays (207 Democrats and 2 others). The bill passed (p. 3532) by 246 yeas (234 Democrats, 8 Republicans, and 4 others), 153 nays (148 Republicans and 5 Democrats).[38]

Of all the amendments offered in the Senate, the most far-reaching was one by Senator Wheeler requiring that both houses must approve each of the President's plans before it should become law. A real fight ensued on this; but the proposal was rejected (p. 4358) by 44 yeas (22 Republicans, 20 Democrats, and 2 others), 46 nays (44 Democrats and 2 others). The bill finally passed in the Senate (p. 4370) by 63 yeas (59 Democrats, 1 Republican, and 3 others), 23 nays (19 Republicans, 3 Democrats, and 1 other).

The act charges the President with reorganizing the executive branch of the government—provided, however, that each proposed change be aimed at one or more of five specific objectives set forth in the law.[39] Congress further retains in each case the right to exercise its legislative power by preventing changes which do not meet with its approval. The law sets up for both houses a rather complete procedure by which any plan of the President is to be considered, and is, incidentally, an unprecedented enactment.[40]

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[34] P. 15305. The bill was approved on August 10 (Public Law No. 379).

[35] House Report 120, p. 1.

[36] See H.R. 8202 of the 75th Cong., 1st sess.

[37] The select committee was created by H.Res. 60, adopted on February 1, which authorized the committee to report the bill at any time and provided that it should not be subject to points of order.

[38] A motion to recommit was lost by 163 yeas, 236 nays (pp. 3531–3532).

In pursuance of the law, the President has submitted two plans. The first was reported to the two houses on April 25. The House voted down a concurrent resolution to defeat it on May 3. The second one was reported on May 9. A resolution to defeat it was rejected by the Senate on May 12. These actions cleared the way for both plans to go into effect after the lapse of 60 days,[41] but the adoption of Senate Joint Resolution 138 made them effective as of July 1, 1939.

(4) The bill for Preventing Pernicious Political Activities (S. 1871) passed the Senate (pp. 5844, 5993) on April 13 after a discussion extending over one printed page, without a record vote. It was considered in the House under general debate for two hours, the "teeth" of the bill having been extracted in the House committee, and then read for amendments (pp. 13386–13423). The adoption of two major amendments more than restored all the force of the original Senate bill. Several minor amendments, some very stupid, were offered; but all were defeated. For exam-

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[39] "(1) To reduce expenditures to the fullest extent consistent with the efficient operation of the Government; (2) to increase the efficiency of the operations of the Government to the fullest extent practicable within the revenues; (3) to group, coördinate, and consolidate agencies of the Government, as nearly as may be, according to major purposes; (4) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies as may not be necessary for the efficient conduct of the Government; and (5) to eliminate overlapping and duplication of effort" (Public Law No. 19).

[40] The procedure set up in both bodies for the consideration of any reorganization proposal by the President includes: "A resolution with respect to a reorganization plan shall be referred to a committee . . . by the President of the Senate or the Speaker of the House of Representatives, as the case may be." After the issue has been before either House or Senate committee for 10 days, and has not been reported out, it is then in order for any person favoring the resolution [the resolution to disapprove the President's plan] to move that the said body discharge the said committee from further consideration of the issue, and the motion is highly privileged. Debate on the motion may not exceed one hour. Only one such motion in either House is in order. After a "committee has reported, or has been discharged from further consideration of, a resolution with respect to a reorganization plan, it shall at any time thereafter be in order . . . to move to proceed to the consideration of such resolution." The motion is highly privileged and is not debatable. Debate on the resolution for adoption or rejection of the plan may not exceed 10 hours. The detailed procedure is too involved for a more complete review. For details, see Part II of Public Law No. 19.

[41] The defeat of such a resolution in either house in effect blocks the disapproval of any plan submitted by the President.

ple, Representative Duncan of Missouri proposed an amendment to make it "unlawful for any candidate for Senator or Representative in Congress in any primary or general election to make any public audible speech in his own behalf or in behalf of any political party of which he is a member . . . or engage in any political activities whatsoever in his own behalf or in behalf of any political party" (p. 13409). This was defeated by vote of 188 to 72. The bill, cutting across party lines, passed in the House by 242 yeas (158 Republicans, 82 Democrats, and 2 others), 133 nays (132 Democrats and 1 other[42]), and was then sent back to the Senate with the House amendments, in which the Senate immediately concurred.[43]

(5) In connection with the national defense program, acts passed during the session—falling under the general headings of (a) army, (b) navy,[44] (c) army, navy, and marines, (d) aviation, (e) coast guards, and (f) military reservations—totaled 65. These measures not only "bridged gaps" in the law, but authorized many millions of dollars for new projects. Two of the most outstanding, which are reviewed here, were H.R. 4278 and H.R. 3791. The first, "To authorize the Secretary of the Navy to proceed with the construction of certain public works," authorized expenditures for naval facilities not to exceed $66,800,000. The bill was debated in the House under special rule for 6 hours, and then read under the five-minute rule for amendments. In the House, the most discussed section, the fortification of Guam, was stricken from the bill before its passage on February 23 (p. 2604), by 205 yeas (138 Republicans, 64 Democrats, and 3 others), 168 nays (152 Democrats, 15 Republicans, and 1 other). It was passed in the Senate on April 19 (p. 6207) after very brief consideration.

The Adequate National Defense bill (H.R. 3791) carried out rather closely the recommendations of the President.[45] The military group used tremendous pressure to secure its passage. The hearings in the House committee lasted from January 17 to February 2, during which time 17 men, all of whom were in the army or of the War Department, appeared before the committee. The bill passed in the House on February 15, in nearly the form reported, by 367 yeas (232 Democrats, 131 Republicans, and 4 others), 15 nays (14 Republicans and 1 Democrat). In the Senate, the bill was debated for 6 days, most of which time was devoted to the question of whether there should be 5,500 or 6,000 planes. The latter number was finally adopted (p. 3238) by a vote of 54 yeas (45 Democrats, 8 Republicans, and 1 other), 28 nays (15 Democrats, 11 Republicans, and 2 others). During the debate on a certain amendment (p. 3350), which extended over 6 printed pages of the *Record*, nothing pertinent to the subject having been uttered, Mr. Norris arose and addressed the chair thus: "I wonder if I would be out of order if I should discuss the amendment pending before the Senate." The Senate made several changes in the bill, some of which, as usual, were compromised in conference.[46]

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[42] P. 13424. The motion to recommit was voted down by 146 yeas, 232 nays.

[43] Pp. 13475–13478. Representative Parsons of Illinois denounced the bill as "idiotic, impractical, and the most superfluous and asinine piece of legislation I've ever known intelligent men to consider." "In the hearing that preceded Rules Committee action, Representative Smith of Virginia asked if the bill would 'keep Secretary Ickes from poking his nose into state primaries.' When informed it would not, Mr. Smith said he had 'lost interest in it'." See New York *Times*, July 7, 1939.

[44] During the session, some 23 naval bills, of which 12 were enacted into law, were reported by committees to the House. Some were important.

[45] See presidential message of January 12, 1939. The number of officers in various services was increased from 14,569 to 16,719, the number of planes was fixed at 6,000, etc. (see p. 4171).

(6) The Stabilization Fund, Devaluation, and Silver Purchase bill (H.R. 3325), extending the time within which the powers relating to the stabilization fund and alteration of the weight of the dollar may be exercised, passed the House on April 21 with almost unanimous Republican opposition. The vote on the motion to recommit showed 225 nays (221 Democrats and 4 others), 158 yeas (154 Republicans and 4 Democrats, all of Texas).[47] All but committee amendments in the House were lost, as is the usual result with all technical bills. In the Senate, the Administration suffered defeat when the bill first passed, on June 26 (p. 11127). Two amendments offered by Senator Adams and adopted struck out the devaluation power of the President [by 47 yeas (29 Democrats, 17 Republicans, and 1 other) and 31 nays (28 Democrats, 1 Republican, and 2 others)][48] and set the price of silver by statute at 77,57 [by 48 yeas (30 Democrats, 16 Republicans, and 2 others) and 30 nays (27 Democrats, 2 Republicans, and 1 other)].[49] These votes disclosed a coalition of silverites with conservatives cutting across party lines. The bill was sent to conference and there the Senate conferees gave way to the House. The bill, by the adoption of the conference report in a form quite acceptable to the Administration, was finally passed in the House (p. 11696) by 229 yeas (222 Democrats, 3 Republicans, and 4 others), 160 nays (153 Republicans and 7 Democrats), and in the Senate (p. 11955) by 43 yeas (40 Democrats, 1 Republican, and 2 others), 39 nays (18 Republicans, 19 Democrats, and 2 others).[50]

(7) The Public Salary Tax bill (H.R. 3790) was an Administrative measure. The need for this legislation had been emphasized in two different messages by President Roosevelt, on April 25, 1938, and January 19, 1939.[51] The bill passed in the House on February 9 (p. 1857) by 269 yeas (197 Democrats, 68 Republicans, and 4 others), 103 nays (85 Republicans and 18 Democrats). The measure was given very brief consid-

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[46] P. 4171. [47] P. 6433. [48] P. 11093. [49] Pp. 11102–11103.

[50] It was approved on July 6, 1939, and became Public Law No. 165.

[51] Senate Report 112.

eration in the Senate (pp. 5233–5242) and passed without a record vote.[52]

(8) The amendments to the Second Liberty Bond Act (H.R. 5748) passed the House on May 23 (p. 8473) and the Senate, with practically no discussion of the bill, on June 1.[53]

(9) The TVA Act of 1939 (S. 1796) was passed in the Senate after very brief consideration on April 13.[54] The bill, having been greatly altered in committee to the satisfaction of certain leaders who opposed the TVA, passed in the House (p. 10043) by 192 yeas (144 Republicans and 48 Democrats), 167 nays (158 Democrats, 5 Republicans, and 4 others). In the conference, the House lost on practically every amendment except the curtailment of the bond issue from $100,000,000 to $61,500,000. When the conference report was before the House (p. 12718), one member stated: "The House is receding on everything of any importance except the amount. I feel sure a large majority of the membership will realize the mistake made in voting for many of the provisions of the House bill and will now vote for the adoption of the conference report." The report was adopted in the House (p. 12720) by 208 yeas (193 Democrats, 11 Republicans, and 4 others), 145 nays (131 Republicans and 14 Democrats). It was agreed to in the Senate after a very few minutes' discussion without a record vote (p. 12831).

(10) The Export-Import Bank bill (H.R. 4011), "To continue the functions of the Commodity Credit Corporation and the Export-Import Bank . . . ," passed the House on February 21 (p. 2429) and the Senate on February 23.[55]

(11) The Reconstruction Finance Corporation bill (S. 1102), "To continue the functions of the Reconstruction Finance Corporation . . . ," passed the Senate on February 16 (p. 2089) and the House on February 20.

(12) Two housing bills were enacted. H.R. 5324, "To amend certain sections of the National Housing Act," was passed in the House on April 12 (p. 5800), without a record vote on passage, after 4 amendments had been added to it, two of which were opposed by the chairman of the committee, Mr. Steagall. The bill passed in the Senate on April 27.[56] The

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[52] Approved on April 12; Public Law No. 32.

[53] Pp. 9124–9126. "The purpose of this bill, and it has the unanimous support of the committee, is to provide greater flexibility in the management of the public debt. Under the present law, as amended, the limit of the public-debt obligation is $45,000,000,000, subject, however, to a limitation in the amount of bonds which may be outstanding at one time, namely, $30,000,000,000" (p. 8451).

[54] P. 5872. The bill passed the Senate twice—first, as S. 1796 on April 13, and second, as a rider to the Second Liberty Bond Act on June 1.

[55] P. 2580. The bill was approved on March 4, 1939, and became Public Law No. 3.

[56] This act was to aid insurance of home mortgages. It amended U.S.C. title 12, secs. 1702–1732; 48 stat. 1246. Approved on June 3; Public Law No. 111.

second bill, S. 2240, "To provide for a national census of housing" was approved on August 11.

(13) The Securities and Exchange Commission bill (S. 2065), "To provide for the regulation of the sale of certain securities in interstate and foreign commerce and through the mails, and the regulation of the trust indentures under which the same are issued," was passed in the Senate on May 2 (p. 7046) and in the House on July 19 (p. 13244).[57]

(14) Laws concerning setting up new district courts, extending the jurisdiction of certain classes of courts as to subject-matter, retiring judges, and the organization, procedure, and administration of courts totaled 13. No comprehensive measure on agriculture was enacted during the session, but 25 minor bills immediately connected with agriculture were enacted to alter or to extend the life of various laws. Nine of them amended the Agricultural Adjustment Act of 1938. The subjects of immigration and naturalization received much attention, but no important law was enacted. The committees reported to the House 28 bills on the subjects, and 4 became law. Bills concerning the District of Columbia consumed no little time. More than 100 such were reported back to the two houses, and 34 became law.[58] Three bills on the subject of foreign service became law, and two concerning merchant marine. Other subjects on which one or more bills were enacted include: Alaska, additional clerk hire for congressmen,[59] bankruptcy, Civilian Conservation Corps, Disaster Loan Corporation, Employees' Compensation Commission, expositions,[60] federal highways, Roosevelt Library, grazing, Home Owners' Loan Corporation, Indians, investigation of economic concentration, national forests, national parks, Panama and Canal Zone, postal service, reclamation projects, retirement of civil service employees, regulation of petroleum, seamen's wage allotments, taxation, regulation of vessels, and veterans.

A great number of important bills were lost in the legislative shuffle.

[57] Approved on August 3; Public Law No. 253.

[58] The District tax bill (H.R. 6577) caused much trouble before it was finally passed; it was not enacted until July 26, the fiscal year having elapsed June 30. Originally, it passed both houses very shortly after consideration began, but the differences in the bill as passed in the two houses kept the bill in conference nearly a month. The main conflict arose over the amount of federal contribution, the House deciding upon $5,000,000 and the Senate upon $7,500,000. The amount was finally compromised at $6,000,000 (Public Law No. 225).

[59] The bill for additional clerk hire (H.R. 6205) for members of Congress passed in the House on May 16 (p. 7886) by a vote of 237 to 95. It was amended and passed in the Senate on June 29 (p. 11495), and was approved on July 25 (Public Law No. 216). The bill raised the amount allowed congressmen for hire of secretaries from $5,000 to $6,500 and gave each senator one or two additional clerks at $1,500, depending upon the population of his state.

[60] Expositions seemed to have a big year. Eighteen such bills were reported to the House, of which 8 became law.

The Neutrality bill (H.J. Res. 306) passed in the House (p. 11738), after a turbulent fight, by 200 yeas (194 Democrats, 4 Republicans, and 2 others) 188 nays (153 Republicans, 33 Democrats, and 2 others). It was sent to the Senate and died in the Senate Foreign Affairs Committee. Financing of Self-liquidating Projects (S. 2864 and H.R. 7120) was proposed for enactment in both houses under separate bills. The Senate passed its bill on August 1 (p. 14712) by 52 yeas (47 Democrats, 2 Republicans, and 3 others), 28 nays (17 Republicans and 11 Democrats). The House (p. 14771) refused even to consider its bill. The special rule providing for consideration of the bill was rejected by 193 nays (146 Republicans and 47 Democrats), 167 yeas (164 Democrats and 3 others). The National Housing Act (S. 591), to lend $800,000,000 on housing projects, passed the Senate (p. 9622) by 48 yeas (36 Democrats, 9 Republicans, and 3 others), 16 nays (10 Democrats and 6 Republicans), but was never granted a hearing in the House. The special rule clearing the way for its consideration was rejected (p. 15208) by 191 nays (137 Republicans and 54 Democrats), 170 yeas (159 Democrats, 8 Republicans, and 3 others). The Transportation Act of 1939 (S. 2009) passed both houses, but died in conference. The differences between the bill as passed in the House and Senate were so great that compromise was impossible in the short time before Congress adjourned. The Wages and Hours bill (H.R. 5435) was discussed in the House quite a bit, but never passed either house. Three rivers and harbors bills suffered complete defeat. The Townsend bill (H. R. 6466) was killed in the House (p. 9151). A bill on stream pollution control (S. 685) passed the Senate on May 1 (p. 6914) and was sent to the House. The Rivers and Harbors Committee reported it back to the House on May 10 and a special rule from the Rules Committee for its consideration was reported, but it was never called up, nor was the bill ever discussed in the House. The Florida Ship Canal bill (S. 1100) was defeated in the Senate (p. 7991) by 36 yeas (34 Democrats and 2 others), 45 nays (23 Democrats, 21 Republicans, and 1 other). H.R. 4929, for promotion of officers of the navy, was passed in both houses (pp. 6718, 11798), but died in conference. The Compulsory Block Booking bill (S. 280), the fifth bill on the subject which has been before the Senate, passed the Senate by 46 yeas, 28 nays (pp. 12902–12903); it was never considered by the House. A bill on the Detention of Certain Aliens (H.R. 5643) was passed in the House by 288 yeas, 61 nays (p. 7278). It was reported to the Senate, but never considered.

The Senate as a Council. The Senate was called upon to advise upon and consent to "a general treaty between the United States . . . and the Republic of Panama" concerning which Mr. Pittman, chairman of the Foreign Relations Committee, said: "I consider this one of the most important treaties that has been submitted to the Senate in a great while. Whether we consider the Canal in connection with the question of possible war in the future, or whether we consider the Canal from a purely commercial standpoint, in any event, it is the life line of the United States."[61] The "resolution of ratification" was agreed to (p. 13845) by 65 yeas (59 Democrats, 4 Republicans, 2 others) as against 16 nays (Republicans). Several other minor treaties, so non-controversial that record votes were not taken on them, were approved by the Senate during the session. Others, ready for consideration, were not disposed of.

Executive sessions for the consideration of appointments were rather frequent. Approximately 11,000 nominations were approved during the session; only 12 were rejected.[62] One of the appointments most discussed in the Senate was that of Harry Hopkins as Secretary of Commerce. He was confirmed (p. 895) by 58 yeas (53 Democrats, 2 Republicans, and 3 others), 27 nays (21 Republicans, 5 Democrats, and 1 other). The nomination of William O. Douglas as Associate Justice of the Supreme Court was confirmed (p. 5257) by 62 yeas (50 Democrats, 9 Republicans, and 3 others), 4 nays (Republicans). The nomination of Archibald MacLeish as librarian of the Congressional Library was confirmed (p. 11513) by a vote of 63 yeas (50 Democrats, 11 Republicans, and 2 others), 8 nays (6 Republicans and 2 Democrats). Mr. William S. Boyle, nominee for district attorney for the district of Nevada was refused his appointment without a record vote (p. 11521). The question of senatorial courtesy was raised in connection with the appointment of Floyd H. Roberts as judge of the western district of Virginia. President Roosevelt sent in the nomination against the will of both of the Virginia senators. A real fight ensued. Both Senator Glass and President Roosevelt wrote long public letters to the newspapers over the matter. The nomination was rejected (p. 1633) by 9 yeas (8 Democrats and 1 other), 72 nays (50 Democrats, 21 Republicans, and 1 other).

Procedure in the Two Houses. Any differences in the procedure of the two bodies in the recent session as contrasted with that of prior sessions arose from the changes in party line-ups and the nature of the particular bills considered. The House and Senate were actually in session 148 and 129 days, respectively. Nineteen of the 148 sittings of the House and 20 of the 129 sittings of the Senate were consumed for purposes other than legislation. On these days bills were not debated or considered.[63] A limited number of bills, comparatively speaking, received entirely too much consideration, while others were hurried through to enactment. Much of the general debate in both bodies was useless, affording practically no enlightment on the subject.[64] In the House, when bills were read for amendments under the 5-minute rule, during which time members must speak to the subject, the chairmen frequently appeared to be in too much of a hurry to get the bills finished. Most of these discussions were terminated under pressure by the chairmen asking unanimous consent that all debate "on this amendment and all amendments thereto be closed in . . . [5 to 30] . . . minutes." By and large, on reading the debates in the Senate throughout the session, one becomes rather pessimistic about the advantages of freedom of debate.

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[61] P. 13773. See p. 13764.

[62] These were mostly minor postmasters.

[63] For legislative purposes, therefore, the House was in session 129 days and the Senate 109.

[64] This was true especially in the House when a bill not considered under a special rule was before that body for general debate in committee of the whole.

(1) *Procedure in the House:* The House utilized the rules of the preceding session (having adopted them on the first day)[65] except when operating under a special rule, a frequent practice. The Rules Committee reported 52 special rules to the House,[66] of which 35 were debated. Thirty-three of these—a number second to that in only two other sessions[67]—were adopted. Twenty-four were open rules merely giving otherwise unprivileged bills the right of way for a hearing in the House. Nine of the 35 considered in the House provided that no points of order against their respective bills should be made, and 4 of the number prescribed definitely the procedure for their respective bills.[68] One special rule prohibited any amendments and another defined the kind of amendments in order. All but three specified a maximum time for general debate[69] of the particular bill (varying from 1 to 9 hours) "to be equally divided and controlled by the chairman and ranking minority member" of the committee. The bills were then to be read under the 5-minute rule for amendments, followed by the committee rising and reporting the bill to the House, with "such amendments as may have been adopted." At that stage the previous question was to be considered "as having been ordered" on the bill and amendments to final passage, without "intervening motion except one motion

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[65] Changes to define more clearly the jurisdiction of 3 committees (Committee on Invalid Pensions, Committee on Pensions, and Committee on World War Veterans' Legislation) were adopted (p. 12).

[66] Eleven of these were laid on the table without consideration because the bills to which they related had been disposed of under some other procedure. Six of the 52 were never called up.

[67] Thirty-four rules were adopted in the second session of the 73rd Congress, 37 in the second session of the 74th Congress, and 33 in the first session of the 75th Congress.

[68] The special procedure was practically the same in each case. To illustrate from H. Res. 219: "It shall be in order to consider without the intervention of any point of order the substitute committee amendment recommended by the Committee on Military Affairs now in the bill, and such substitute for the purpose of amendment shall be considered under the 5-minute rule as an original bill. At the conclusion of such consideration the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any member may demand a separate vote in the House on any of the amendments adopted in the Committee of the Whole to the bill or committee substitute" (p. 10008–10009).

[69] Such debate is generally in committee of the whole.

to recommit with or without instructions." Two special rules were adopted to take certain bills from the Speaker's table and send them to conference.[70] Not all of the bills for which special rules provided consideration were enacted into law;[71] 3 did not even pass the House.

Any explanation of the above situation should include the lack of ability on the part of the leaders to keep the membership in line with the Administration and the policy followed by the chairman of the Rules Committee, as stated by himself: "Personally, I am following the practice of bringing before the House any and all important legislation without having it smothered in the Rules Committee. . . ."[72]

Five bills were passed under suspension of the rules. Two others were called up under this procedure, but "a second" was rejected. Under Calendar Wednesday procedure, 37 bills were passed during 8 different Wednesdays. The committees reported 517 private bills to the House, which were placed on the Private Calendar. All but 14 of them were disposed of,[73] and 267 became law. Fifteen bills died on the House Calendar and 101 on the Union Calendar. Fifty-two bills died on the Consent Calendar; of these, 18 had not been heard. Nineteen motions to discharge committees from further consideration of certain bills were filed, but only one received the necessary 218 signatures. This stage was reached on July 28, a date too late in the session, according to the rule,[74] for a hearing. Roll calls during the session totaled 157, of which 69 were quorum calls[75] and 88 yeas and nays on bills and various questions.

The leadership during the session enjoyed many victories and suffered some defeats. The following will include a review of part of its most inter-

[70] Bills on the Speaker's table which require further consideration in committee of the whole cannot be sent to conference by a bare majority vote under normal procedure; unanimous consent, suspension of the rules, or a special rule is required. In each of the cases referred to, unanimous consent was not possible; and suspension of the rules is not usually feasible in party battles. See *Cannon's Procedure in the House of Representatives*, pp. 396–397.

[71] Twenty-six (or their substitutes) became law. Nine were lost along the way, of which 2 died in conference; two were never debated since the rules for their consideration were rejected, one was voted down by the House (H.R. 6466—Townsend bill), and 4 were never considered in the Senate.

[72] P. 13504. This statement was certainly not in conformity with the course taken on the Wages and Hours bill (H.R. 5435).

[73] See *Calendars of the United States House of Representatives and History of Legislation* (final ed., p. 27). This business is in order on the first and third Tuesdays of each month. If two persons object to such a bill when it is called up, it is recommitted to the committee from which it was reported. It may later be returned to the House for reconsideration as a part of an omnibus bill. See Rule XIII, clause 1.

[74] See Rule XXVII, clause 4: "A petition must have been signed and on the Calendar seven days before it can be called up, and this business is in order only on the second and fourth Mondays of each month."

[75] This includes the first roll-call by states.

esting record. On the very eve of adjournment, it suffered two severe defeats when a great number of Democrats joined with the united Republicans and refused even a consideration of the housing bill and the bill to finance self-liquidating projects.[76] The Administration sought the passage of wages and hours legislation (H.R. 5435). A bill was reported out of the committee to the House by a vote of 16 to 2.[77] The committee authorized the chairman, Mrs. Norton, "to employ every parliamentary procedure to secure its consideration by the House."[78] Acting the part of henchman for the Administration, she planned the passage of the bill under suspension of the rules, and thereby to exclude amendments to the bill. When her first attempt to call up the measure under this procedure was threatened, she made two motions on the same day to recommit the bill to the committee[79] under unanimous consent. Both attempts failed. At a later date, the bill was called up under suspension of the rules, and "a second" was refused by a vote of 110 to 167 (p. 9290). A special rule to give the bill the right-of-way was introduced,[80] but was held up in the Rules Committee. Mrs. Norton requested a closed rule in order to get the bill passed as wanted by the Administration. The other group desired an open rule in order to amend the bill. Both factions were strong, and the resolution remained in committee until the very last days of the session. When finally it was reported out, Mr. Sabath, chairman of the Rules Committee, would not call it up. One member said: " . . . I regret exceedingly that the chairman of the Rules Committee saw fit to keep in his pocket the rule granted by the Rules Committee until it was made practically impossible to realize the passage of this bill during this session."[81] Another stated: " . . . I say that the will of Congress has been thwarted by the leadership by not permitting the rule to come before the House."[82]

The TVA bill (S. 1796) presented another interesting case. The measure was passed very hurriedly in the Senate on April 13 (p. 5872), sent to the House, and referred to the Military Affairs Committee. There it stayed. Mr. May of Kentucky, chairman of the committee, was very much opposed to the bill. At late as June, 1, the House had taken no action on it. On this day, Mr. Norris successfully proposed the bill's attachment as a rider[83] to the Second Liberty Bond Act (H.R. 5748)—action which would have forced the House to allow the membership a vote on the TVA bill. Hurriedly, to avoid a vote on the Senate measure, the representatives in control of the bill reported a compromise to the House on June 12, which was passed on June 13. It was then sent to conference, where the House lost to the Senate in everything but the amount of the bond issue.

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[76] H.Res. 286 (for the consideration of H.R. 7120, to finance self-liquidating projects) was lost by a vote of 167 yeas (164 Democrats and 3 others), 193 nays (146 Republicans and 47 Democrats), p. 14771. H.Res. 266 (for the consideration of S. 591, amending the National Housing Act) was lost by a vote of 170 yeas (159 Democrats, 8 Republicans, and 3 others), 191 nays (137 Republicans and 54 Democrats), p. 15208.

[77] H.R. 7133 was favored by agricultural groups as opposed to H.R. 5435, but the committee would not report it out.

[78] P. 15327.

[79] Pp. 7898, 7899.

[80] H.Res. 289.

[81] P. 15328.

[82] P. 15217.

The parity amendment to the Agricultural Appropriation bill (H.R. 5269) had a stormy voyage through Congress. It was first added to the bill in committee of the whole by a vote of 175 to 171 (p. 4814). When a separate vote was demanded on the amendment in the House, it was defeated (p. 4825) by a vote of 191 yeas (168 Democrats, 20 Republicans, and 3 others), 204 nays (135 Republicans, 68 Democrats, and 1 other). In the Senate, the amendment was added to the bill and returned to the House. A special rule was adopted to send the matter to conference.[84] There the parity amendment was placed in the conference report. Hence, once again, the issue came before the House and was adopted by a vote of 180 yeas (152 Democrats, 24 Republicans, and 4 others), 175 nays (129 Republicans and 45 Democrats).

The action on this bill as a whole disclosed much log-rolling and sectionalism, which was openly admitted on the floor of the House. Mr. Bradley, Democrat from Pennsylvania, stated: "I want to be in such a position that when I go back to my constituents I can say to them that I have coöperated with the members from the rural section of this country because they in turn coöperate with us in securing what we believe to be and know are equitable demands from our own constituents."[85] Mr. Tarver of Georgia made several points of order against certain appropriations in the bill, and the items were eliminated. He gave as his defense for this action, "what is sauce for the goose is sauce for the gander," and added that he still would not make the points of order if certain gentlemen from sections of the country where the money was to be used had not objected to similar provisions for other sections of the country.[86]

The Townsend bill was reported to the House by the Ways and Means

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[83] When this action was taken, a few senators objected; but Mr. Norris said: "So far as I know, everybody is in favor of this measure except a few members of the House who have key positions and who are holding up the legislation. . . . The purpose is to give the members of the House an opportunity to vote on the question, which opportunity they are denied under the House procedure . . . I repeat, it is not a discourtesy . . . and, so far as I am concerned, their vote will settle the question" (p. 9117).

[84] It requires unanimous consent to send such a matter to conference from the Speaker's table in this manner; therefore, when Mr. Cannon made the unanimous consent request and objection was heard, he resorted to the use of a special rule (pp. 8442–8444).

[85] P. 4566.

[86] P. 4611.

Committee without recommendation. The bill was heard in the House under a closed special rule, allowing no amendments,[87] and this kept the bill from being amended as a condition of adoption. This action forced many members reluctantly to commit themselves in no uncertain terms on a bill which appeared to be political dynamite. As expected, the bill was defeated (p. 9151) by 97 yeas (55 Republicans, 40 Democrats, and 2 others), 302 nays (194 Democrats, 107 Republicans, and 1 other).

Finally, the actions of the House on certain amendments invite interesting conjecture. On 7 different occasions during the session, amendments were added to bills in committee of the whole. Later, after the committee had risen and reported the bills back to the House and separate votes were demanded on the amendments, the identical amendments were voted down. For example, the Sumners amendment to the Reorganization bill (H.R. 4425) was adopted in committee of the whole by a vote of 176 to 155; in the House, on the same day, it was rejected by 193 yeas, 209 nays (p. 3530).

(2) *Procedure in the Senate.* By and large, parliamentary procedure in the Senate was very much as in all recent sessions, and no significant changes in the rules were made. Several times the Senate limited its debate on particular bills by mutually agreeing to a specific time for a vote.

The Senate staged a half-hearted filibuster on the Stabilization bill (H.R. 3325). When it first considered the measure, the power of the President to devaluate the dollar was stricken out and the price of silver was to be set by law. In conference, the bill was changed back to the satisfaction of the Administration. Certain groups in the Senate were opposed to this action, and consequently the adoption of the conference report was delayed until July 5 (p. 11955). In the meantime, certainly under some pressure, the membership was whipped into line to accept the report by a vote of 43 yeas (40 Democrats, 1 Republican, and 2 others), 39 nays (19 Democrats, 18 Republicans, and 2 others). In effect, the members turned around and accepted what they had already rejected.

The most interesting political procedure in the Senate during the session was the actions on the Wheeler amendment to the Reorganization bill (H.R. 4425).[88] This amendment was first adopted by a vote of 46 yeas (23 Democrats, 21 Republicans, and 2 others), 43 nays (41 Democrats and 2 others). Mr. Clark, apparently with ideas different from those of Mr. Byrnes, who had changed his vote in order to be eligible to make the motion, moved to reconsider the vote and immediately moved to lay that motion on the table—in effect, to kill the chance of reconsidering the amendment. A parliamentary fight was on. The motion to table was lost by 44 yeas (22 Democrats, 20 Republicans, and 2 others), 44 nays (42 Democrats and 2 others). Mr. Clark then tried to withdraw his motion, which was ruled out of order. After much confusion, the motion to reconsider was adopted (p. 4358) by 46 yeas (44 Democrats and 2 others), 44 nays (22 Republicans, 20 Democrats, and 2 others). The Wheeler amendment was then voted on again and rejected, 44 yeas (22 Republicans, 20 Democrats, and 2 others), 46 nays (44 Democrats and 2 others). A motion to reconsider was laid on the table (p. 4358).

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[87] The rule was adopted by a vote of 221 yeas, 53 nays (p. 8988).

[88] Providing that both houses must act to approve a plan proposed by the President.

The action of the Senate on the appointment of Elmer D. Davies as district judge (p. 12470) presented an unusual situation. After confirmation had occurred, Mr. Barbour stated that the nomination had been disposed of unexpectedly. He, therefore, offered a motion to recall the nomination from the President. The motion was adopted (p. 12484), but the following day the President replied that he was unable to accede to the request, since the appointment had already been sent out.

The President and Congress. While not as successful as at earlier times, the President was no less active in trying to control legislation. He vetoed 58 bills and sent several messages, in addition to using such "pressure" as he could muster to get certain legislation enacted or defeated. The more outstanding contests included those in which the President lost on two of his relief requests after bringing all possible pressure to bear. The Senate struck out $150,000,000 from his $875,000,000 relief request by 46 yeas (41 Democrats, 2 Republicans, and 3 others), 47 nays (26 Democrats, 20 Republicans, and 1 other).[89] The House had emphatically placed the figure at $725,000,000. A request for an additional $150,000,000, sent to Congress immediately after the first bill was enacted, was cut in enactment to $100,000,000.[90] The Neutrality bill passed the House after a genuine fight, by 200 yeas (194 Democrats, 4 Republicans, and 2 others), 188 nays (153 Republicans, 33 Democrats, and 2 others).[91] On being sent to the Senate and referred to the Foreign Affairs Committee, Administration pressure could not avail to bring it forth. After the Senate had greatly curtailed the amount of the request, the House refused even to consider the bill authorizing the Financing of Self-liquidating Projects (H.R. 7120). The same situation obtained on the National Housing bill (S. 591), to lend $800,000,000 on housing projects. Lastly, the President requested legislation on water pollution control, and the Senate passed a bill on the subject (S. 685); but the House never considered it.

FLOYD M. RIDDICK.

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[89] P. 1231.

[90] See H.J.Res. 246 and House Report 332.

[91] See pp. 11527–11625, 11711–11738.

Organization of the Executive Branch of the National Government of the United States: Changes between June 1 and September 30, 1939.[1] As in previous lists, mention is here confined generally to units specifically authorized by law or established by the President by executive order or Reorganization Plans under general authority vested in him. Changes in units created by heads of departments or independent establishments are excluded unless of major importance.

Administrative Office of the United States Courts. Created by Public No. 299, 76th Congress, approved August 7, 1939, effective 90 days thereafter. This office has charge of all administrative matters relating to the offices of clerks and administrative personnel of the courts, the disbursement of appropriations, and the preparation of budget estimates; this work having been formerly in the Department of Justice. The Director and Assistant Director are appointed by the Supreme Court of the United States. All other employees are appointed by the Director, with the approval of the Supreme Court.

Agricultural Advisory Council. Established by the Secretary of Agriculture, September 2, 1939, at the request of the President "to assist in the formulation of policies to deal with the situation brought about by the outbreak of war in Europe." The Council consists of 28 persons not in the government service.

Agricultural Marketing Service, Department of Agriculture. Established by Agriculture Department Appropriation Act for fiscal year 1940 (Public No. 159, 76th Congress), approved June 30, 1939. The new unit takes over certain activities previously conducted by four bureaus as follows: from the Bureau of Agricultural Economics, preparation of crop and livestock estimates, market research, service and regulatory work in connection with farm products and warehousing; from the Bureau of Animal Industry, administration of the Packers and Stockyards Act; from the Bureau of Plant Industry, administration of the Federal Seed Act; and from the Bureau of Dairy Industry, administration of the Dairy Exports Act.

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[1] In the December, 1933, issue of this REVIEW, pp. 942–955, appeared a tabular review of the changes in major units of the national government between March 4 and November 1, 1933. Supplementary lists have appeared in the following issues: April, 1934: changes between November 1, 1933, and March 15, 1934; October, 1934: changes between March 15 and June 30, 1934; February, 1935: changes between June 30 and December 15, 1934; August, 1935: changes between December 15, 1934, and July 5, 1935; October, 1935: changes between July 5 and August 12, 1935; December, 1935: changes between August 12 and October 15, 1935; June, 1936: changes between October 15, 1935, and April 15, 1936; October, 1936: changes between April 16 and July 31, 1936; August, 1937: changes between August 1, 1936, and May 31, 1937; February, 1938: changes between June 1 and November 30, 1937; August, 1938: changes between December 1, 1937, and May 31, 1938; October, 1938: changes between June 1 and July 15, 1938; June, 1939: changes between July 15, 1938, and April 25, 1939; August 1939, changes between April 26 and May 31, 1939.

Bituminous Coal Division, Department of the Interior. Established by the Secretary of the Interior by Order No. 1394 of June 16, 1939, effective July 1, 1939, to administer the functions of the former National Bituminous Coal Commission abolished by Reorganization Plan No. 2, which transferred its functions to the Secretary of the Interior.

Benjamin Harrison Memorial Commission. Created by Public No. 352, 76th Congress, approved August 9, 1939, to prepare plans for establishing in Indianapolis a permanent memorial to Benjamin Harrison. Commission consists of five members appointed by the President. An appropriation of $2,500 for expenses is authorized.

Board of Trustees of the Franklin D. Roosevelt Library. Created by Public Resolution No. 30, 76th Congress, approved July 18, 1939, to administer gifts and bequests to the Franklin D. Roosevelt Library at Hyde Park, New York. The Board consists of the Secretary of the Treasury, the Archivist of the United States, and five members appointed by the President for life. "Membership on the Board shall not be deemed to be an office within the meaning of the Constitution and statutes of the United States." The members receive no compensation, but are allowed necessary expenses.

Bureau of Agricultural Chemistry and Engineering, Department of Agriculture. Created July 1, 1939, under Department of Agriculture Appropriation Act for the fiscal year 1940 (Public No. 159, 76th Congress), approved June 30, 1939. Activities transferred to the Bureau were as follows: (1) from former Bureau of Chemistry and Soils, researches in chemical engineering, fertilizer, food, industrial farm products, naval stores, protein and nutrition, and allergen investigations; (2) from former Bureau of Agricultural Engineering, investigations dealing with farm equipment, structures, machinery, and operating efficiency, and extension work. The new Bureau will also include the four regional research laboratories authorized by the act of February 16, 1938 (52 Stat. L. 537). These are now in course of construction and will probably not be ready until after July 1, 1940.

Bureau of Agricultural Engineering, Department of Agriculture. Discontinued June 30, 1939, under Department of Agriculture Appropriation Act for the fiscal year 1940 (Public No. 159, 76th Congress), approved June 30, 1939. The activities of the Bureau were distributed among other units as follows: (1) to Bureau of Plant Industry, irrigation and drainage investigations relating to crop production; (2) to Bureau of Agricultural Chemistry and Engineering, investigations dealing with farm equipment, structures, machinery, and operating efficiency, and extension work; and (3) to Soil Conservation Service, irrigation and drainage investigations dealing with construction and hydrologic phases of farm irrigation and land drainage.

Bureau of Chemistry and Soils, Department of Agriculture. Discontinued June 30, 1939, under the Department of Agriculture Appropriation Act for the fiscal year 1940 (Public No. 159, 76th Congress), approved June 30, 1939. The activities of the Bureau were distributed as follows: (1) to Bureau of Agricultural Chemistry and Engineering, researches in chemical engineering, fertilizer, food, industrial farm products, naval stores, protein and nutrition, and allergen investigations; and (2) to Bureau of Plant Industry, soil surveys, peat investigations, and researches relative to plant mineral constituents derived from soils.

Bureau of Plant Industry, Department of Agriculture. Under the Department of Agriculture Appropriation Act for the fiscal year 1940 (Public No. 159, 76th Congress), approved June 30, 1939, the following activities were transferred to this bureau, effective July 1, 1939: (1) from former Bureau of Agricultural Engineering, irrigation and drainage investigations relating to crop production; and (2) from former Bureau of Chemistry and Soils, soil surveys, peat investigations, and researches relative to plant mineral constituents derived from soils.

Civilian Conservation Corps. Extended from July 1, 1940, to July 1, 1943, by Public No. 326, 76th Congress, approved August 7, 1939.

Commission to Provide for Participation in the Celebration of the 125th Anniversary of the Writing of the Star Spangled Banner. Created by Public Resolution No. 37, 76th Congress, approved August 5, 1939, to make plans for the participation of the United States in the celebration to be held in Baltimore on September 14, 1939. The Commission consists of the President of the United States, the President of the Senate, the Speaker of the House, the senators from Maryland, three other senators appointed by the President of the Senate, the members of the House from Maryland, three other members of the House appointed by the Speaker, the governor of Maryland, the mayor of Baltimore, and three persons to be appointed by the President of the United States. An appropriation of $5,000 was made in the Third Deficiency Appropriation Act for 1939 (Public No. 361, 76th Congress), approved August 9, 1939.

Committee for Reciprocity Information. Transferred to Department of State by Executive Order 8190 of July 5, 1939, effective July 1, 1939.

Consumers' Counsel Division, Department of the Interior. Established in the office of the Solicitor of the Department of the Interior by the Secretary of the Interior by Order No. 1400 of July 7, 1939. The office of Consumers' Counsel in the National Bituminous Coal Commission was abolished by Reorganization Plan No. 2, submitted by the President on May 9, 1939, and effective July 1, and its functions were transferred to the office of the Solicitor of the Interior Department.

Executive Office of the President. Executive Order No. 8248 of September 8, 1939, provided the following organization for the Executive Office of the President: (1) the White House Office, including (a) the secretaries to the President, (b) the Executive Clerk, and (c) the administrative assistants to the President; (2) the Bureau of the Budget, including the Central Statistical Board; (3) the National Resources Planning Board; (4) the Liaison Office for Personnel Management; and (5) the Office of Government Reports. While not specified in the order, it is understood that the Office of Government Reports includes the Press Intelligence Service, the United States Information Service, and the other units of the National Emergency Council that were transferred to the Executive Office by Reorganization Plan No. 1.

Farm Credit Administration. Reorganization Plan No. 1, effective July 1, 1939, provided for transfer of the Farm Credit Administration to the Department of Agriculture. Under date of May 22, 1939, the Secretary of Agriculture issued a press release stating that "the Farm Credit Administration, including the Federal Farm Mortgage Corporation, will not become an integral part of the Department of Agriculture. Responsibility . . . will remain with the Governor of the Farm Credit Administration. . . . Therefore, to this extent the Farm Credit Administration will be an autonomous Federal agency as heretofore. . . . However, one clear purpose of the President's reorganization plan is to reduce the number of officials reporting directly to the President. Hence, the Governor of the Farm Credit Administration will report to the Secretary of Agriculture rather than to the President. The Secretary's responsibility will therefore be that heretofore exercised directly by the President."

By Memorandum 823 of the Secretary of Agriculture of June 3, 1939, the Secretary delegated to the Governor of the Farm Credit Administration all the powers conferred on the Secretary of Agriculture and the Department of Agriculture by Reorganization Plan No. 1.

Federal Fire Council. Transferred to Federal Works Agency by Executive Order No. 8194 of July 5, 1939, effective July 1, 1939.

Franklin D. Roosevelt Library. Authorized as a branch of the National Archives Establishment by Public Resolution No. 30, 76th Congress, approved July 18, 1939. The land, building, and initial collection are to be donated to the United States, but the "faith of the United States is pledged that . . . the United States will provide such funds as may be necessary for the upkeep of said Library and the administrative expenses and costs of operation thereof."

Gallipolis Sesquicentennial Commission. Created by Public Resolution No. 49, 76th Congress, approved August 10, 1939, to coöperate in the sesquicentennial celebration of the settlement of Gallipolis, Ohio. Commission is composed of seven officers and citizens of Gallia county and

Gallipolis, who serve without compensation. An appropriation of $10,000 for expenses is authorized.

Goethals Memorial Commission. Transferred to War Department by Executive Order 8191 of July 5, 1939, effective July 1, 1939.

Joint Committee to Investigate the Adequacy and Use of the Phosphate Resources of the United States. Extended from February 15, 1939, to January 15, 1940, by Joint Resolution No. 48, 76th Congress, approved August 10, 1939, and investigation broadened to include potash and related minerals.

Office of Commissioner to Determine the Validity and Amount of Claims Against the Union of Soviet Socialist Republics. Created by Public Resolution No. 36, 76th Congress, approved August 4, 1939. The Commissioner is appointed by the President, and will receive a salary of $9,000 a year; all subordinate personnel is to be appointed by the Secretary of State, without regard to the civil service laws or the Classification Act of 1923. The work of the Commissioner is to be completed within two years from the date on which he qualifies. An appropriation of $25,000 a year is authorized.

Office of Foreign Agricultural Relations. Established in the office of the Secretary of Agriculture by memorandum of the Secretary of Agriculture of June 30, 1939, effective July 1, 1939. This Office succeeds to the functions of the Foreign Agricultural Service that were not transferred to the Department of State by Reorganization Plan No. 1.

Social Security Board. Effective August 19, 1939, Social Security Board Administrative Order No. 41, combined the United States Employment Service (transferred from the Department of Labor to the Board by Reorganization Plan No. 1) and the Bureau of Unemployment Compensation of the Board in a new unit—the Bureau of Employment Security. This bureau is divided into the following units: (1) Office of the Director, (2) Employment Service Division, (3) Unemployment Compensation Division, (4) Field Division, (5) Research and Statistics Division, (6) State Technical Advisory Service.

Soil Conservation Service, Department of Agriculture. Under Department of Agriculture Appropriation Act for the fiscal year 1940 (Public No. 159, 76th Congress), approved June 30, 1939, effective July 1, 1939, there were transferred to this agency from the former Bureau of Agricultural Engineering the irrigation and drainage investigations dealing with construction and hydrologic phases of farm irrigation and land drainage.

Virginia (Merrimac) Monitor Commission. Created by House Concurrent Resolution 32, passed August 2, 1939, to report on a suitable memorial to commemorate the battle between the Merrimac and the Monitor. Consists of three senators appointed by the President of the Senate and three representatives appointed by the Speaker of the House. The Commission is to report on or before April 15, 1940.

United States Antarctic Service. Established as a branch of the Division of Territories and Island Possessions of the Department of the Interior following an appropriation of $340,000 in Public No. 160, 76th Congress, approved June 30, 1939, for "investigation and survey of natural resources of the land and sea areas of the Antarctic regions."

United States Coronado Exposition Commission. Created by Public No. 186, 76th Congress, approved July 17, 1939, to represent the United States in connection with the exposition to commemorate the 400th anniversary of the expedition of Francisco Vasquez de Coronado. The Commission consists of the Vice-President, the Speaker of the House of Representatives, the Secretary of the Interior, and the Secretary of Commerce. An appropriation of $250,000 is authorized; $200,000 was appropriated in the Third Deficiency Appropriation Act for 1939 (Public No. 361, 76th Congress), approved August 9, 1939.

United States Housing Corporation. Transferred to Federal Works Agency, effective July 1, 1939, by Executive Order 8186 of June 29, 1939.

War Resources Board. Created August 9, 1939, by the Assistant Secretary of War and the Assistant Secretary of the Navy, as joint chairmen of the Army and Navy Munitions Board for the purpose "of advising with the Army-Navy Munitions Board on policies pertaining to the mobilization of the economic resources of the country in the event of a war emergency and perfecting the plans already under preparation by that agency." A release issued jointly by the War and Navy Departments stated that "in an emergency the War Resources Board would become an executive agency of the Government with broad powers similar to those of the old War Industries Board." The board originally consisted of six persons not in the government service; another member was added on September 6. On September 27, the papers reported that at his press conference on the preceding day the President said that the Board would soon be disbanded; that a report was expected within ten days, after which there would be nothing more for the Board to do.

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The Executive Veto in Illinois. The original veto power in Illinois was vested in a council of revision, consisting of the governor and the justices of the supreme court, whose function was limited to a preview of legislative acts for the purpose of making recommendations in regard to their constitutionality. Practical difficulties hampered the effective operation of this council, especially the inability of justices to perform adequately their two sets of diverse duties. The constitutional convention of 1848 found it expedient, therefore, to reform the constitutional mandate of veto by concentrating the function in the governor. The veto power itself was not substantially changed; the governor retained merely a suspensive veto. A precedent was being established, however, in the national scene; for in the period from 1829 to 1837, the national legislative body had forced upon it a new interpretation of the executive power by President Jackson's assumption of power to veto on grounds of policy in addition to the traditional constitutional grounds.

Thus far, however, and continuing until the Civil War period, the veto was construed in accordance with its original intention, at least in the states. The executive was still conceived of as an administrative official; the legislative assembly was viewed as the true representative of the people's interests; and the veto remained a provision for the correction of possible legislative error. The ineffectiveness of such a veto was soon to become manifest. The record of the Illinois assembly in the period immediately following the Civil War is perhaps no more shameful than the general legislative *débacle* of that period; but the enactment of 2,113 bills during Governor Oglesby's term (1864–68), and of an additional 1,814 during the term of Governor Palmer (1868–72), illustrates the orgy which took place in legislatures generally. The disturbing feature of these legislative mills was the fact that a large majority of their products were obviously, and even blatantly, special in nature. Grants, subsidies, charters, appropriations—favors in the form of special and local legislation—were enacted in gross negligence of public interest. (The fiction of Mark Twain's *Gilded Age* is hardly as strange as the truth.) A clear impression of the extent of this violation of legislative principle may be had by comparing the four volumes of special and local bills enacted in 1869 with the single volume of enactments of general state interest and purpose.

One of the primary tasks undertaken by the Illinois constitutional convention of 1869–70 was that of providing some effective limitation upon arbitrary legislative action.[1] The heroic, but hopelessly ineffective, attempt of Governor Palmer to dam this flood of legislative error by an extensive use of the suspensive veto was perhaps the most important factor in calling to the attention of the people the possibilities of the executive negative as a check upon the recurrence of such legislative misdemeanor. Said Elliott Anthony of Chicago, one of the chairmen of the constitutional convention of 1869–70: "Had our present governor been clothed with this veto power, what untold miseries would he have saved us from!" Likewise, James C. Allen of Crawford county apparently expressed a general sentiment in contending that "the curse of much of the vicious legislation that has prevailed for the last few years" could have been dealt with effectively had the governor possessed a stronger power of veto.

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[1] *Journal of the Constitutional Convention of the State of Illinois* (Springfield, Ill., 1870); *Debates and Proceedings of the Constitutional Convention of the State of Illinois* (Springfield, Ill., 1870), 2 vols.

Thus we find arising out of a distrust of the legislative body a definite desire and demand that necessary power be conferred upon the governor to prevent future stampedes in the legislative body.[2] As a result, the state constitution was so amended in 1870 as to give the governor a power of veto which could be overridden only by a two-thirds majority of both houses of the legislature.[3] Under the pressure of immediate need, protagonists of this new executive power (for it was essentially a *new* power) were not interested in the observation that they were making a radical departure from the principles of representative government upon which they had thus far proceeded. The legislature had, during the previous six years, proved itself a poor guardian of the people's interests; and the people themselves now turned to the executive for protection against the private interests which were finding expression in the legislative body. Thus the position of governor came to be conceived in a new light—not as the executive concerned with administrative duties, but, paradoxically, as the executive concerned with the protection and maintenance of the people's rights and interests against the representatives of the people.

That such an attitude prevailed is attested by the discussions of the convention. Warnings were indeed voiced that this contemplated veto would result in an arbitrary one-man power, contrary to the original conception of the veto;[4] but the sentiment for a strong veto power prevailed throughout, and the objections of a minority were ignored.

The reaction to this new constitutional provision was immediate. That the governors were only too glad to assume and exercise their new power is evident from the records.[5]

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[2] *Constitutional Convention Bulletin:* "The distrust of the legislature which developed rather promptly after the forming of the first state constitution led, however, to the conferring of a veto power upon the governor, and there has been a definite tendency toward an increase of this power."

[3] A motion to provide that the veto might be overridden by a majority of both houses was defeated, 47–11; likewise, a provision that the assembly, if it failed to re-pass a vetoed bill, might submit it to the people by a majority vote, was defeated, 53–12.

[4] *E.g.*, the statement of Mr. Snyder that "the veto power is contrary to the theory of our government . . . and, I say, if we permit a one-man power, or any other power, to step between the people and their representatives, we stand in the way of democratic government."

[5] Cf. N. H. Debel, *The Development of the Veto Power of the Governor of Illinois* (University of Illinois, 1917). For the sake of consistency, I have tried to follow the classification of vetoes used by Mr. Debel, in so far as this is derivable from his study. The conclusion to which Mr. Debel's investigation led him presents a veritable paradox of democratic government: "He [the governor] more nearly than any other officer in the state government represents all the people. Thus we have the strange spectacle of the veto power, once a royal prerogative, having become an indispensable power in the hands of a democratic executive."

Period	*Bills Enacted*	*Full Vetoes*	*Percentages*
1848–1868	5839	28	.47
1868–1872	1814	83	4.57*
1872–1884	849	18	2.12
1884–1900	1304	39	2.99
1900–1916	1908	229	12.00
1916–1936	4039	431	10.67

* Governor Palmer's attempt to exercise the suspensive veto; 18 bills were passed over his veto.

A substantial factor in the governor's readiness to assume this new legislative function was probably the fact that the development of technical administrative departments was gradually delimiting the actual administrative duties of the executive. In 1884, the constitutional provision for veto was further amended to give the governor power to veto *items* in appropriation bills. In itself, this did not constitute a major concession, and it undoubtedly has been justified in use; but significance lies in the fact that this revision provided the one additional power necessary to make the veto a potential legislative "stick" in the hands of any governor inclined so to use it.

Many intangible and extremely variable elements enter into the analysis of such a development as that of the veto; statistics may well present only a partial picture; and certainly minor fluctuations cannot be interpreted as indicative of significant trends. On the other hand, when the exercise of the veto shows a 401 per cent fluctuation between two consecutive periods, there can hardly be any objection if this phenomenon be termed a significant development, suggesting some fundamental shift in governmental structure. Especially is this inference justified when approximately the same increase is maintained throughout a succeeding period of 20 years, i.e., 1916–36.

The figures establish this remarkable increase in the use of the executive veto; a further, and even more important, political consideration is that concerning the comparative effectiveness of this new control over legislation. From 1916 to 1936, a total of 431 full vetoes and 33 item vetoes were effected during regular sessions of the assembly. During this period, *not a single vetoed bill was passed over the veto, or amended and re-passed, by the assembly in which it originated.*[6] With the single exception noted, a special session veto, the last vetoed bill to be overridden by the assembly in which it originated was during the term of Governor Altgeld, 1892–96. In other words, the more than 650 executive vetoes recorded since 1900 have been, not corrections of legislative error, but literally final checks upon legislative procedure. The last bill to be amended and re-passed in the same assembly was during Governor Deneen's first term, 1904–08.

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[6] H.B. 32 (Old Age Pension), which Governor Horner vetoed during the special session of 1935–36, was re-passed by the assembly. Political circumstances operated in this trial of strength between governor and assembly; and it is but fair to remark that the ground of the governor's veto was a desire to maintain consistency with the federal enactment.

It is significant that of the 431 vetoes executed since 1916, 230 were effected after adjournment of the legislature. This is most certainly not the fault of the governors, but of the legislative procedure which necessitates a rush of bills in the closing days of the session. Nevertheless, it obviously has the effect of strengthening the power of veto in actual application. It is extremely difficult to estimate how many vetoed bills have been re-passed by later assemblies, or to what extent they have been amended before re-passage. Such bills are re-written, re-numbered, and introduced as new bills; and it would be difficult to find a person sufficiently acquainted with the contents of all bills through several sessions to give exact information on this important point. It seems to be the general opinion of experienced legislators, however, that instances are rare indeed in which vetoed bills are re-introduced and passed without having first undergone sufficient amendment to meet, or at least compromise, the objections of the veto. The single factor which might serve to make such later passage of a vetoed bill possible, namely, a change of administration, serves but to illustrate the political and legislative nature of the present power of veto.

A more specific indication of the changing definition of the power to veto may be obtained by an analysis of the grounds upon which the right to veto has been exercised. The justifications for veto, as contained in the messages of the governors, fall into four major categories (following Debel, *op. cit.*): constitutional, policy, defective, and appropriation. Once again, there is evident a change so abrupt and drastic in nature as to justify the inference that the power of veto has undergone a fundamental revision:

	Constitutional	*Policy*	*Defective*	*Appropriation*
1872–1884	62%	22%	16%	0%
1884–1900	20	71	7	2
1900–1916	28	45	13	14
1916–1936	22	36	36	6

In addition to the immediate increase in number of vetoes effected, there is evidence here of a new and increasingly arbitrary construction of the executive check upon legislative action. There is in the amendment of 1884 no suggestion that such an extension of the possible grounds for veto was intended; although the overwhelming support of the revision might be interpreted as a tacit extension of such privilege to the governor.[7] At any rate, whatever may have been the immediate cause, there appears in the subsequent employment of the veto a conception of the grounds upon which this power could legitimately be exercised, a conception contrary to the original grant of veto.

It is difficult to discern what reasons or circumstances would necessitate an increase in vetoes on grounds of policy from 22 per cent to 71 per cent in succeeding periods of 12 and 16 years. This disproportionate extension of veto on grounds of policy—and it was at the expense of the more restrictive category of constitutional cause—is in itself an index to the position being assumed by the chief administrative officer of the state. That this constitutes a long step from the democratic conception of veto need hardly be noted, for it makes of the veto privilege an instrument of direct personal or political control over the law-making body.

The possibilities of the "defective" category were apparently not exploited until the most recent period. The surprising feature of this change is that the constant addition of technical sources of information and service, such as the Legislative Reference Bureau and various forms of committee research, should have operated to *increase* rather than to decrease the number of ambiguous, conflicting, and otherwise defective bills passed by the legislature. There is, however, another factor which cannot be ignored in the analysis of the "defective" ground: namely, the increasing number of bills enacted during each session. The number of acts which are put through the formalities of consideration and passage in any current session of the assembly (563 in 1937) may be reason enough for an increase in poorly constructed and badly drafted bills. In this connection, it will be interesting to observe the effect of the newly organized Legislative Council of Illinois. If the veto is indeed a corrective check upon legislative error, then the addition of this research to the work of the Reference Bureau should effect an immediate reduction in the use of veto on grounds of constitutional and defective objections.

Graphic illustration will present the relations between these causal categories of veto more succinctly than extended explanation. Some of the extreme ranges illustrated are capable of analysis by reference to specific circumstances. The high point in number of vetoes at 1916–20 resulted from the emergency situation of the World War period, the regular sessions having been held in 1917 and 1919. Governor Lowden's veto messages contain repeated statements to the effect that it would be "ill-advised at this time to enter upon enterprises of this nature." The decline in number of vetoes from 1920 to 1928 seems to have come

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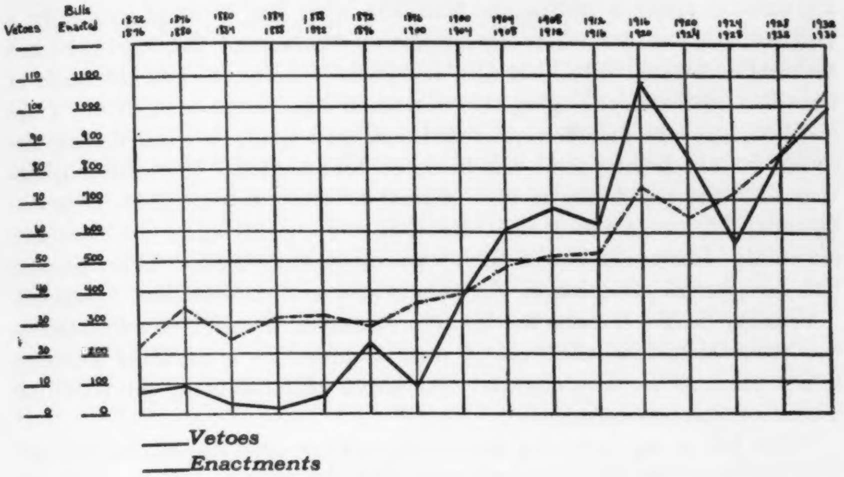
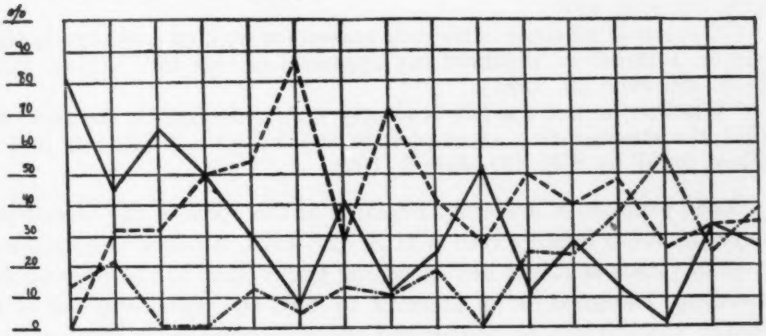
[7] Senate, 35–7; House, 107–2; Ratification, 427, 821–60, 244.

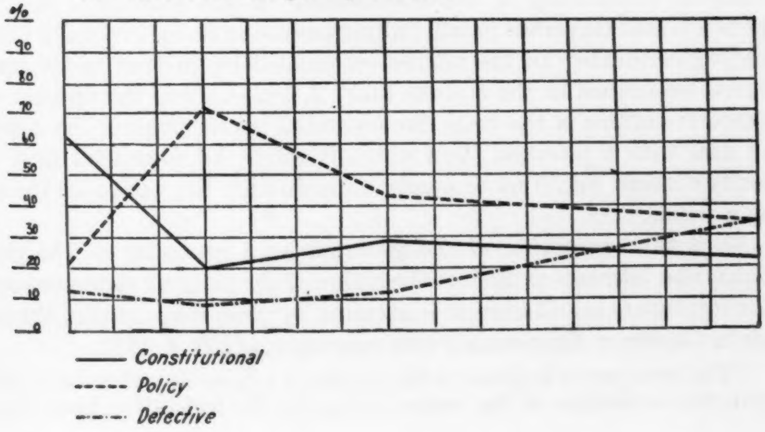
A: Number of Bills Enacted and Vetoed



B: Veto Percentages



C: Veto Percentages by Periods



as the result of an unusually close alliance between the governor and the legislature, another indication that the veto has become primarily a political weapon, for when the legislature "behaves," the veto need not be used so extensively. Note also the peak of defective and the nadir of constitutional vetoes during this period. A significant correlation of opposition appears between constitutional and policy vetoes during the period in which the power was being re-defined, 1888–1916. In conjunction with the rapid rise of the "defective" ground after 1916, constitutionality became a minor consideration in the exercise of the executive stalemate. Extrapolation of such variable subject-matter is dangerous; but the general direction of the trends appears manifest and sustained.

Finally, brief reference to the veto messages themselves corroborates the contention that the veto is now assumed as a political privilege rather than as an administrative function. (All italics in the following quotations are my own.)

"This bill *in my judgment* creates an unwarranted discrimination. . . . The fact that this bill is in harmony with the federal law . . . does not change the fundamental principle of equality." (Gov. Lowden on H. B. 568, June 30, 1919)

"*It seems to me* there is no good reason for making a change in this provision. I therefore withhold my approval of this bill." (Gov. Small on H.B. 49, June 30, 1921)

"Whether or not the bill is clearly unconstitutional, the fact remains that the classification attempted in this bill is not fair nor just. . . ." (Gov. Small on S.B. 431, July 5, 1921)

As an example of arbitrary negation of the voice of the assembly, consider Governor Small's veto of H.B. 327, 1923, which attempted to add a *possible* prison sentence not exceeding thirty days to the existing fine for speeding. Designed as an attempt to curb the increasing toll of traffic deaths, the bill had obviously had the consideration of the lawyers who compose a majority of the membership of the legislative body. This penalty, said Governor Small, "impresses me as being unusually cruel and disproportionate" to the offense committed by driving faster than the speed prescribed in the statute (July 2, 1923). Thus the opinion of one executive officer of the state circumvented the attempt of the legislature to deal with a problem upon which it might be presumed that a majority opinion would more nearly coincide with the wishes of the people as a whole.

That the conception of the governor as a protector of the people's rights and interests as against the action of the people's representatives in the legislature is still current is attested by plain statement of the principle in Governor Emmerson's veto message on H.B. 1, 1931:

"The veto power is given to the governor to exercise when he is satisfied with the unwisdom of the course taken by the legislative body. He fails in his constitutional duty if he hesitates to make use of it when he is convinced that the action of the legislature *is detrimental to the interest and welfare of the people of the state.*" (April 13, 1931)

I realize that the weight of authoritative opinion is inclined to justify the extended use of the power of veto on grounds of expediency; but in matters of policy, it is doubtful whether the simple pragmatic criterion of current expediency is a sufficient principle of operation. It is possible that such variable criteria may indeed prove contrary to the very policy they hope to implement. The question remains as to whether such an arbitrary power as now inheres in the executive veto can be brought within the definitive limits of the administrative function. As for the contention that legislatures have themselves proved the necessity for some such control over their action, it is certainly consistent with democratic principle to reply that to safeguard the people from the folly of their elected representatives is the surest way to perpetuate folly in legislatures.

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RURAL LOCAL GOVERNMENT

County and Township Government in 1938.* Developments in rural local government during 1938, although including occasional innovations, consisted chiefly in the continuation and extension of trends previously discernible. Although most state legislatures were not in session, several of those which met gave an unusual amount of attention to problems of local government. Especially in evidence were efforts to place local finances upon a sound basis, but there were also noteworthy measures designed to adjust local areas to present needs and to revitalize the internal machinery of local government. In reviewing the events of the year, a topical arrangement similar to that used in previous summaries[1] will be followed.

I. AREAS

The establishment of new areas for the performance of particular functions continued. California, Louisiana, Mississippi, and Virginia were added to the list of states having enacted legislation authorizing the establishment of soil conservation districts,[2] and by June 15, 1939, such legislation had been enacted in 35 states. As of that date, 368 petitions for the organization of soil conservation districts had been filed with the state soil conservation committees of 26 states, and 161 districts in 24 states had actually been established.[3] Virginia provided for the establishment of sanitation districts to protect tidal waters from pollution; while the legislature of Louisiana authorized the creation of irrigation districts, and proposed a constitutional amendment to enable police juries to establish garbage disposal districts in unincorporated areas. Districts for forest fire control were established in several South Carolina counties. The supreme court of Pennsylvania sustained the constitutionality of a 1937 statute establishing county institution districts in that state for care of the indigent and abolishing existing poor districts.[4]

On the other hand, the abandonment of governmental organization in existing units was effected or contemplated in a few instances. Town deorganization attracted considerable interest in Maine, where several towns have recently abandoned their corporate organization by authority of state legislation and other towns are reported to be contemplating similar action. In January, 1939, the board of commissioners of Hardin county, Illinois, abolished the four road districts into which the county had previously been divided and established a single district coterminous with the county.[5]

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* Mr. George Traicoff, a student in the University of Illinois College of Law, has for the third time given the writer valuable assistance in the collection and analysis of materials used in the preparation of this annual summary.

[1] In this Review, Vol. 31, pp. 884–913; Vol. 32, pp. 936–956.

[2] *Statutes of California*, 1938 (spec. sess.), ch. 7; *Acts of Louisiana*, 1938, no. 370; *Laws of Mississippi*, 1938, ch. 253; *Acts of Virginia*, 1938, ch. 394.

[3] Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See this Review, Vol. 32, p. 937; *infra*, "Federal-Local Relations."

[4] *Acts of Louisiana*, 1938, nos. 415, 416; *Acts and Joint Resolutions of South Carolina*, 1938, pp. 1582, 1666, 1687, 1846, 1849, 1853, 2268; *Acts of Virginia*, 1938, ch. 335; Kotch v. Middle Coal Field Poor District, 329 Pa. 390, 197 Atl. 334 (Supreme Court of Pennsylvania, 1938).

II. ORGANIZATION AND PERSONNEL

Terms and Qualifications of Officers. The voters of North Carolina and Montana ratified constitutional amendments lengthening the terms of certain county officers from two to four years. The North Carolina amendment applied to the offices of sheriff and coroner; and that of Montana to the offices of sheriff, treasurer, clerk and recorder, assessor, surveyor, coroner, superintendent of schools, and public administrator. On the other hand, Missouri voters defeated a proposed amendment to permit the reëlection of sheriffs and coroners to succeed themselves. Illinois amended her welfare law to require that members of the administrative staff of any county welfare department be legal residents of the county for three years prior to their appointment. A Kentucky statute prescribing qualifications for deputy sheriffs, deputy constables, and other non-elective peace officers stipulates that an appointee to any such office must not, within a period of two years prior to his appointment, have performed any service as a privately paid detective, policeman, guard, or peace officer as an active participant in any labor dispute.[6]

Office Consolidation. A beginning in the direction of county-office consolidation is being made in Montana under authority of a constitutional amendment of 1934. By the terms of the amendment and enabling legislation enacted thereunder, the board of county commissioners of any county may, at its discretion, combine any two or more of eight elective offices. Acting under this authority, three county boards issued consolidation orders in 1938 to become effective at the beginning of 1939. In McCone and Musselshell counties, the office of assessor was consolidated with that of clerk and recorder. In Petroleum county, the offices of assessor and superintendent of schools were consolidated, as were those of sheriff, coroner, and public administrator. On the other hand, the board of Golden Valley county rescinded orders entered in 1937 to consolidate the offices of assessor and clerk and recorder, and those of deputy treasurer and deputy sheriff. Up to the end of 1938, consolidation orders had been made in eight of Montana's 56 counties, although in three counties all such orders, and in a fourth county some orders, had subsequently been rescinded. The year 1939 was begun, therefore, with one or more consolidated offices actually in existence in five counties.[7]

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[5] William S. Carpenter, "Deorganization in Maine," in this REVIEW, Vol. 32, pp. 1139–1142 (Dec., 1938); Leon Weaver, note in *National Municipal Review*, Vol. 28, pp. 252–253 (Mar., 1939).

[6] *Laws of Illinois*, 1938 (1st spec. sess.), p. 27; *Acts of Kentucky*, 1938 (reg. sess.), ch. 49; Paul W. Wager, note in *National Municipal Review*, Vol. 27, p. 613 (Dec., 1938); R. R. Renne, note in *ibid.*, p. 614; William L. Bradshaw, note in *ibid.*, Vol. 28, pp. 63–64 (Jan., 1939).

County and Town Executives. Interest in the establishment of local executives continued, although actual accomplishments in that direction were not great. Two counties, Los Angeles in California and Chesterfield in Virginia, established offices partaking somewhat of the nature of the county managership. In Los Angeles county, the board of supervisors provided by resolution for a chief administrative officer appointed by the board. The duties of the new officer are similar to those normally possessed by a manager, although less extensive. It is understood that the board of supervisors regards the new arrangement as experimental and that it may soon submit to the county voters a series of proposed charter amendments, including a proposal for the introduction of the manager plan.[8] In Chesterfield county, the voters for the second time within seven months voted against adopting either the manager or the executive form of government as provided by the Virginia optional county-government law. Subsequently, the county board of supervisors, acting under authority of a special legislative act of 1938, appointed an executive secretary to the board. The executive secretary holds office at the pleasure of the board of supervisors and performs various duties of a managerial nature.[9] The new charter of Westchester county, New York, providing for an elective county executive, became fully operative at the beginning of 1939. In San Mateo county, California, on the other hand, manager government came to an end in 1938, with the state legislature giving final approval to a charter amendment making the office of county executive elective.[10] A referendum in Grady county, Georgia, indicated that the voters of that county did not desire the manager form of government, but preferred to retain an existing set-up under which a full-time chairman of the board of commissioners has limited managerial powers.[11]

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[7] Roland R. Renne, "County Office Consolidations in Montana," *National Municipal Review*, Vol. 28, pp. 143–148 (Feb., 1939).

[8] H. F. Scoville, "Los Angeles County Adopts Modified Manager Plan," *National Municipal Review*, Vol. 27, pp. 461–462 (Sept., 1938); Robert C. Houston, "County Manager Government in California," *ibid.*, Vol. 28, pp. 128–133 (Feb., 1939). See *infra*, "Home Rule and Optional Charters."

[9] *Acts of Virginia*, 1938, ch. 13; James E. Pate, notes in *National Municipal Review*, Vol. 27, pp. 272–273, 380–381 (May, July, 1938).

[10] *Statutes of California*, 1938 (spec. sess.), p. 121; Robert C. Houston, "County Manager Government in California," *National Municipal Review*, Vol. 28, pp. 128–133 (Feb., 1939).

[11] See H. M. Olmsted, note in *National Municipal Review*, Vol. 27, p. 458 (Sept., 1938); Paul W. Wager, notes in *ibid.*, pp. 462, 512 (Sept., Oct., 1938).

At the town level, considerable interest in manager government was displayed in Maine. The towns of Dover-Foxcroft and Milo, at town meetings, ratified manager charters previously approved by the state legislature, while Bridgton and Fort Kent rejected such charters. Brunswick, Caribou, and Freeport created committees to draft manager charters for submission to the 1939 legislature. Other towns reported as considering the seeking of manager charters include Machias, Pittsfield, and Readfield.[12] The New York legislature authorized adoption of the manager plan by the town of Harrison in Westchester county.[13] A manager-government proposal was defeated by the town of Braintree, Massachusetts, in town meeting.[14]

Personnel Administration. By vote of the local electorate, Monmouth county, New Jersey, placed its employees under the jurisdiction of the state civil service commission.[15] In New York, Nassau county, under the terms of its new charter, became the first county in the state to have a county civil service commission;[16] while Westchester county was provided by its new charter with a county personnel officer. Kentucky established a merit system for probation officers in Jefferson county (Louisville).[17] Erie county, New York, adopted a new classification of positions and salary schedule; and reclassification projects were reported as being carried on in Los Angeles county, California, and Milwaukee county, Wisconsin.[18] Ohio provided for compulsory participation in a centrally-administered retirement system by employees of counties, municipalities, park districts, conservancy districts, health districts, and public libraries.[19] Two amendments to the public-welfare laws of New York should have the effect of stimulating in-service training for welfare employees, both state and local. One of these authorizes the state department of social welfare to grant fellowships and scholarships to state and local welfare employees; while the other provides that counties, towns, and cities may grant their welfare employees leaves of absence, on pay, to enable them to secure further training.[20]

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[12] H. M. Olmsted, notes in *National Municipal Review*, Vol. 27, pp. 225–226, 267–268 (Apr., May, 1938); Orin F. Nolting, "Council-Manager Government," *Municipal Year Book*, 1939, pp. 114–120.

[13] *Laws of New York*, 1938, ch. 699; H. M. Olmsted, note in *National Municipal Review*, Vol. 27, p. 267 (May, 1938).

[14] H. M. Olmsted, note in *National Municipal Review*, Vol. 27, pp. 225–226 (Apr., 1938).

[15] G. Lyle Belsley, "The Advance of the Merit System," *State Government*, Vol. 12, pp. 7–8, 18–19 (Jan., 1939).

[16] Note in *Public Management*, Vol. 20, p. 53 (Feb., 1938). New York counties generally are served by the state civil service commission.

[17] *Acts of Kentucky*, 1938, ch. 37.

[18] Sidney Detmers, "Erie County Adopts New Salary and Position Plan," *National Municipal Review*, Vol. 28, pp. 156–158 (Feb., 1939); G. Lyle Belsley, "Personnel Administration," *Municipal Year Book*, 1939, pp. 10–16.

[19] *Page's Ohio General Code* (cumulative pocket supplement to June 1, 1939), secs. 486-32—486-71.

III. FUNCTIONS

New Functions. The expansion of county and town functions, so conspicuous during recent years, continued through 1938. Of particular interest among the newer county functions is that of supplying electricity to county inhabitants. In December, 1938, the Tennessee counties of Weakley and Carroll, acting under permissive legislation of 1935, became the first counties to undertake the selling of electricity generated by the Tennessee Valley Authority. Both counties acquired their distribution systems from a private utility company, financing the acquisition by the issuance of revenue bonds. Prior to the entry of these Tennessee counties into the utility field, county power systems were to be found in Crisp county, Georgia, and Greenwood county, South Carolina.[21]

Laws authorizing counties to establish housing authorities were enacted by Mississippi and Virginia.[22] By July, 1939, 17 states had enacted legislation providing for county housing authorities; and such authorities had actually been established by 14 counties in six states, as well as by the city-counties of Denver and San Francisco.[23] Public library service on a county or regional basis was extended in 1938 until available in 340 counties as compared with 275 the preceding year.[24] Georgia enacted a local-option law under which counties may prohibit or permit the sale of liquor within their respective boundaries; while Virginia empowered counties to prohibit or regulate Sunday sales of wine and beer in unincorporated areas. Louisiana parishes and certain Georgia counties were authorized to regulate tourist camps. New York counties, as well as Dukes county and the town of Barnstable in Massachusetts, were added to the list of local units which are authorized to spend limited sums for advertising and publicity purposes. A unique county service was authorized in New York state by a law providing that any county may employ a "county service officer" to assist honorably discharged veterans or their families or dependents in securing benefits to which they may be entitled under state or federal statutes.[25] The Georgia constitution was amended to authorize counties to provide protection against forest fires, and to permit the state legislature to delegate to any county power to levy a tax for medical care and hospitalization of the indigent sick.[26] Other facilities which various counties or towns were authorized to provide for public use include toll bridges, wharves, airports, park and recreation grounds, and tuberculosis hospitals.

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[20] *Laws of New York*, 1938, chs. 314, 481.

[21] Lyndon E. Abbott, "Tennessee Counties Distribute Electric Power," *National Municipal Review*, Vol. 28, pp. 169–170 (Feb., 1939).

[22] *Laws of Mississippi*, 1938 (reg. sess.), ch. 338; *Acts of Virginia*, 1938, ch. 310.

[23] Letter to the writer from Leon H. Keyserling, United States Housing Authority, Washington, July 26, 1939.

[24] Julia Wright Merrill, "Public Libraries," *Municipal Year Book*, 1939, pp. 103–106.

[25] *Acts and Resolutions of Georgia*, 1937–38 (spec. sess.), pp. 103, 353; *Acts of Louisiana*, 1938, no. 143; *Acts and Resolves of Massachusetts*, 1938, chs. 134, 184; *Laws of New York*, 1938, chs. 381, 480; *Acts of Virginia*, 1938, ch. 129.

County Zoning. Some progress was made in county zoning. Virginia enacted two statutes by which zoning power, previously confined to counties having a population density of more than 500 per square mile, became available to all counties of the state.[27] Under authority of recent constitutional amendments, the Georgia legislature passed five acts conferring zoning powers upon eight counties: Fulton, which includes Atlanta; Cobb and DeKalb, adjoining Fulton; Richmond, including Augusta; and the four seaboard counties of Chatham, Bryan, Liberty, and Glynn.[28] The laws applicable to Fulton, Cobb, DeKalb, and Richmond counties are designed primarily to permit zoning of an urban or suburban character. The statute applicable to the counties of Chatham, Bryan, and Liberty provides only for zoning along state highways and has as its object the preservation of the attractiveness of the coastal highway which traverses those counties. The Glynn county law, although broad enough in its terms to permit county-wide zoning, was actually sponsored with a view to zoning the coastal highway and urban resort area within the county.[29] County zoning ordinances were adopted during the year by the Wisconsin counties of Walworth, Jefferson, and Dane.[30] Marin county, California, adopted a zoning and billboard ordinance.[31] Another county to enact a billboard ordinance was Glynn county, Georgia.[32]

Functional Consolidation. An outstanding feature of the year's developments was the continued spread of functional consolidation. This trend was most pronounced in the field of health, and was doubtless a result, in part, of the stimulus provided by the federal grants for public health work authorized by Title VI of the Social Security Act. In Indiana, a district health department was established to serve the three counties of Monroe, Brown, and Lawrence, this being the fifth health district to be set up in that state.[33] In Union county, New Jersey, a district health unit was established by the three townships of Cranford, Garwood, and Clark.[34] New York provided that a town and a village, or two or more towns or villages, might, with the approval of the state commissioner of health, appoint a joint health officer.[35] In several instances, health departments were consolidated on a city-county basis. Thus, consolidated departments were established to serve Fayette county and the city of Lexington in Kentucky, Prince George county and the city of Hopewell in Virginia, and Caddo parish and the city of Shreveport in Louisiana.[36] The coöperation of counties in the establishment of joint county tuberculosis sanitariums was authorized in Illinois and Mississippi.[37]

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[26] *Acts and Resolutions of Georgia*, 1937–38 (spec. sess.), pp. 28, 39; letter to the writer from John B. Wilson, secretary of state, State of Georgia, Atlanta, July 31, 1939.

[27] *Acts of Virginia*, 1938, chs. 193, 415.

[28] *Acts and Resolutions of Georgia*, 1937–38 (spec. sess.), pp. 414, 767, 790, 819, 823. See this REVIEW, Vol. 32, p. 946.

[29] See Herman Walker, Jr., "Recent Progress in the Enactment of Rural Zoning Enabling Legislation," *Journal of Land and Public Utility Economics*, Vol. 14, pp. 333–339 (Aug., 1938).

[30] Letter to the writer from J. M. Albers, Wisconsin State Planning Board, Madison, Aug. 1, 1939.

[31] Paul W. Wager, note in *National Municipal Review*, Vol. 27, p. 552 (Nov., 1938).

[32] Note in *Public Management*, Vol. 21, p. 58 (Feb., 1939).

Mississippi provided that two or more counties might coöperate in the establishment of regional libraries; while in Louisiana a previously-instituted tri-parish library experiment was continued and a second similar service inaugurated.[38] In Los Angeles county, California, the county purchasing agent was authorized to act as purchasing agent for school districts within the county.[39] The New York legislature established a new board of social welfare for Erie county with jurisdiction throughout the county, including the city of Buffalo. It was provided, however, that Buffalo should continue to perform within its borders certain welfare services (home relief, veterans' relief, burial relief, and hospitalization) until such time as the city should see fit to transfer those functions to the county by ordinance.[40] Other functions which various local units were authorized to perform coöperatively, either through the establishment of special districts or through contractual arrangements, include fire protection, water supply, sewage disposal, refuse and garbage incineration, and hospitalization of indigents.

Transfer of Functions. There were a few instances, during the year, of transfer of functions from smaller to larger governmental units. Functions hitherto performed by various local boards of health within Newberry county, South Carolina, were transferred to a newly-established county health department; while Pennsylvania provided for state operation of hospitals for mental patients, prohibiting the maintenance of such institutions in the future by counties, cities, or institution districts. The voters of Missouri, however, defeated a proposed constitutional amendment which would have provided for a state highway program involving the transfer of some five thousand miles of county roads to the state system.[41]

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[33] Report of the State Bureau of Local Health Administration, *Indiana Year Book*, 1938, p. 715. These five districts serve 22 of the state's 92 counties. See this REVIEW, Vol. 32, p. 947.

[34] Note in *Public Management*, Vol. 20, p. 90 (Mar., 1938).

[35] *Laws of New York*, 1938, ch. 660.

[36] Note in *Public Management*, Vol. 20, p. 90 (Mar., 1938); Sam C. Caldwell, note in *ibid.*, p. 85 (Mar., 1938); Paul W. Wager, note in *National Municipal Review*, Vol. 28, p. 253 (Mar., 1939).

[37] *Laws of Illinois*, 1938 (1st spec. sess.), p. 18; *Laws of Mississippi*, 1938 (reg. sess.), ch. 299.

[38] *Laws of Mississippi*, 1938 (reg. sess.), ch. 289; Julia Wright Merrill, "Public Libraries," *Municipal Year Book*, 1939, pp. 103–106. The Louisiana projects were financed from state funds.

[39] Joseph W. Nicholson, "Municipal Purchasing," *Municipal Year Book*, 1939, pp. 34–38.

[40] *Laws of New York*, 1938, chs. 28, 330.

IV. FINANCE

Three states took major steps to regulate further the financial powers and procedures of local governmental units with a view to placing local finances upon a sound basis. Action to that end was taken in New Jersey and Kentucky by statute and in New York by constitutional amendment.

The New Jersey legislature enacted four important statutes embodying, with minor changes, the recommendations of the Princeton Local Government Survey. One of these acts establishes a state department of local government, with broad powers of supervision over local finance.[42] Another is supplementary to the "cash basis" local budget law of 1936, elaborating and strengthening the provisions of the earlier act. Local budgets must be prepared according to forms prescribed by the newly-established local government board, and must be submitted to the state commissioner of local government for his determination that all legal requirements have been met. Emergency appropriations, after adoption of the regular budget, may be made only by a two-thirds vote of the members of the local governing body; and the approval of the commissioner of local government must be secured before total emergency appropriations for any year may exceed three per cent of the current operating appropriations. Capital budgets are required of the local units.[43] A third act confers upon the state department of local government broad powers of control over local accounting, auditing, and reporting. The local government board is authorized to prescribe accounting systems, as well as forms for financial statements and other reports. Auditing by registered municipal accountants is retained, but the commissioner of local government is authorized, if he finds that the financial affairs of a local unit demand special supervision, to require that the regular audits of such unit be made only by the auditing staff of the state department. The books of local sinking fund commissions must be examined and audited by the commissioner of local government at least once every two years.[44]

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[41] *Laws of Pennsylvania*, 1938 (spec. sess.), no. 21; *Acts and Joint Resolutions of South Carolina*, 1938, p. 1692; William L. Bradshaw, note in *National Municipal Review*, Vol. 28, pp. 63–64 (Jan., 1939).

[42] *Acts of New Jersey*, 1938, ch. 158 (Local Government Department Act), discussed *infra*, "State-Local Relations." Since the New Jersey session laws for 1938 were not available to the writer when this article was prepared, the discussion of the several acts is based upon the text thereof as reprinted in Memorandum B of the New Jersey Citizens' Committee for the Princeton Local Government Survey entitled *Local Government Acts, 1938* (Plainfield, May 25, 1938).

[43] *Acts of New Jersey*, 1938, ch. 128 (Local Budget Act Supplement).

The purpose of the fourth act is to impose special financial restrictions upon municipalities which are in danger of falling into an unsound fiscal condition and to provide special supervision for such units. The term "municipality" is defined in such manner as to include townships but not counties. Restrictions provided by the act may, after an opportunity for a hearing, be applied by the local government board to any municipality in the finances of which is found to exist any of five conditions specified in the statute. These conditions are defined in some detail and involve, respectively, default upon outstanding obligations, arrearage in payments due to other units of government, successive budget deficits, excessive tax delinquency, and the requirement of an undue portion of the budget for liquidation of floating debt as required by law. When the provisions of the act are applied to a local unit, the borrowing power of such unit, except for certain specified purposes, is suspended, and the amount raised from local taxes may not be increased more than five per cent above the amount raised in the preceding year. These restrictions on borrowing and taxing apply not only to the municipality with respect to which the act is invoked, but also to any school district or special district situated therein. While a municipality is operating under the provisions of the act, its finances are subject to special supervision by the local government board, supervision by that agency continuing until such time as the condition which occasioned state action no longer exists.[45] It is to be noted that this act aims primarily at providing *preventive* treatment for local units *approaching* an unsound financial condition, and is to be distinguished from the act of 1931 providing for the supervision of defaulting municipalities by the municipal finance commission.[46]

In Kentucky, with approximately one-fifth of the state's counties in default and additional defaults impending, a special legislative session enacted a measure designed to provide more adequate control over the issuance of county bonds, to protect county sinking funds, and to check over-spending.[47] Entitled the County Debt Act, this measure provides that no county may contract bonded indebtedness in excess of one-half of one per cent of the assessed valuation of taxable property within the county without first securing the approval of the state commissioner of revenue. It is the duty of the commissioner to withhold his approval if, after a hearing, he believes (1) that the financial condition of the county does not warrant a reasonable expectation that interest and principal can be met when due without seriously restricting other county expenditures, (2) that the issuance of the bonds will not serve the best interests of both the county and its creditors, or (3) that the bonds or their issuance will be invalid. From action of the commissioner disapproving a proposed bond issue appeal lies to a county debt commission (composed of several state officers ex officio) and thence to the courts. The act prescribes the procedure to be followed by counties in the issuance of bonds and the kinds of securities in which sinking-fund moneys may be invested. Semi-annual reports on the condition of county sinking funds must be made to the commissioner of revenue. Any county *may*, and any county whose bond issues have been approved by the state commissioner of revenue *must*, turn over its sinking-fund assets to the commissioner of revenue for investment and management. To prevent over-spending, counties are required to file with the commissioner of revenue quarterly reports indicating in detail the condition of their various budget appropriation accounts. In local-election years, counties are forbidden to spend or encumber more than 65 per cent of the total amount of the current budget during the first half of the fiscal year.

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[44] *Ibid.*, ch. 159 (Fiscal Administration Act).

[45] *Ibid.*, ch. 127 (Fiscal Supervision Act).

[46] *Revised Statutes of New Jersey*, 1937, secs. 52: 27-1 to 52: 27-66. See *Legislative Proposals, 1938* (Legislative Memorandum No. 1-A, Princeton Local Government Survey, Princeton, Feb. 2, 1938), p. 61.

The amendments to the New York constitution proposed by the constitutional convention of 1938 and approved by the electorate in the November election of that year include several changes in and additions to the constitutional provisions of that state relating to local finance.[48] Counties, towns, school districts, cities, and villages are prohibited from contracting indebtedness for longer than the period of probable usefulness of the object or purpose for which the indebtedness is contracted, and in any event for longer than 40 years. Existing indebtedness may be refunded only with the approval of the state comptroller, and in no event for longer than 20 years. Local borrowings other than those of a strictly temporary nature are to be evidenced by serial bonds payable in annual instalments, the first instalment to be paid not more than two years after the indebtedness is contracted. If local appropriating authorities fail in any year to make the required appropriations for debt service, it becomes the duty of the fiscal officer of the local unit concerned, enforceable through judicial process, to set aside from the first revenues thereafter received a sufficient sum for that purpose. The former constitutional limitation of county and city indebtedness to 10 per cent of the assessed valuation of real estate is temporarily continued and extended to towns and villages, but in the future this limit is to be computed on the basis of the *average* assessed valuation for the past five years rather than on the valuation for the current year.[49] The debt limit of counties other than Nassau, as well as that of towns or villages, will be reduced after January 1, 1944, to nine per cent, and after January 1, 1949, to eight per cent, of assessed real estate values. Counties, towns, villages, and cities generally are now given the privilege, formerly enjoyed only by New York City, of excluding from their debt limit indebtedness incurred for any revenue-producing improvement which during the preceding year has yielded a net revenue above operating costs and debt service. Indebtedness incurred for water-supply purposes, heretofore excluded from the debt limit of cities only, is henceforth to be excluded from the limits of counties, towns, and villages as well.

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[47] *Acts of Kentucky*, 1938 (1st spec. sess.), ch. 31. See James W. Martin, "State Supervision of County Finance in Kentucky," *National Municipal Review*, Vol. 28, pp. 149–155 (Feb., 1939).

[48] *Constitution of New York* (1938), art. VIII. See also *The Constitution of the State of New York* (Constitutional Convention, 1938, Document No. 16); "New Municipal Finance Provisions for New York State Constitution," *National Municipal Review*, Vol. 27, pp. 592–594 (Dec., 1938).

V. HOME RULE AND OPTIONAL CHARTERS

The constitutional amendments adopted in New York modified in several respects existing provisions relative to the "home rule powers" of counties and the duty of the legislature to provide optional forms of county government.[50] Henceforth no special or local law, or law relating to one county only, may be enacted except (a) upon request of the elective governing body, concurred in by the elective executive where such office exists, of each county to be affected, or (b) upon certificate of necessity by the governor and concurrence of two-thirds of the members of each house of the legislature. In the case of counties having adopted optional forms of government, any special act thus passed is still subject, upon petition, to local referendum if it proposes to change the form or composition of the governing body of the county or to create, abolish, or modify the powers of any elective office. The adoption by counties of optional forms of government is made easier by providing that such forms may be adopted by merely a majority of the votes cast thereon in the county as a whole, whereas it was formerly necessary to secure favorable majorities also in every city of the county containing more than 25 per cent of the county's population and in that part of the county, if any, outside such cities. However, if the proposed new form of government provides for the transfer of any function of government to or from cities, towns, or villages, such transfer must be approved by the voters of the cities, towns, or villages concerned.

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[49] This five-year average valuation, rather than the valuation for the current year, is also to be used henceforth as the basis for computing certain local tax limits.

[50] See *Constitution of New York* (1938), art. IX.

The New York legislature amended the Buckley-Reoux optional-charter law of 1937 to exempt from the appointing power of the county executive the subordinates of certain elective county officers. Virginia provided that no county shall vote more often than once in three years upon the question of changing its form of government under that state's optional county-government law. The board of supervisors of Los Angeles county, California, was reported to be contemplating the proposal of a series of amendments designed to modernize the 1913 charter under which that county is operating.[51]

VI. INTERGOVERNMENTAL RELATIONS

State-Local Relations. State-local relations were marked, in 1938 as in several preceding years, by an extension of state administrative control over local governmental units. The most significant developments in this direction occurred in the field of finance.

New Jersey, a state in which central control of local finance had already been developed to a relatively high degree, established a new state department of local government vested with broad powers of supervision and control over the fiscal affairs of local units.[52] The department of local government consists of a commissioner of local government and a local government board. The commissioner is elected by a joint session of the legislature for a five-year term, and acts as the executive and administrative head of the department. The local government board consists of the commissioner, as chairman, and four members appointed by the governor and senate for five-year overlapping terms. The act provides that the commissioner and other board members shall be selected with special reference to their "knowledge and understanding of local government, law, finance, and administration."[53] At least one member of the board must have had experience as the chief executive or as a member of the governing body of a municipality, and at least one other must have had experience as a member of the governing body of a county. Not more than two members of the board may belong to the same political party. Powers with respect to local finance heretofore exercised by the state auditor are transferred to the department of local government, and additional powers are conferred upon the department by the law creating it and by three companion measures.[54] In general, it may said that duties strictly administrative or executive in nature are in the hands of the commissioner, while rule-making and quasi-judicial functions are vested in the board. Appeal from orders or determinations of the commissioner may be taken to the board, and thence to the courts. The powers and duties of the department with respect to local finance include the giving of advice to local officials as to improved methods of local administration; the examination and approval of local budgets; the authorization of emergency appropriations exceeding three per cent of the current budget; prescribing budget classifications, accounting systems, and forms for audits and reports; and supervising temporarily the financial affairs of local units which are approaching an unsound fiscal condition. In establishing this department, New Jersey has sought to provide a competent and continuing agency in which to centralize the administration of the various activities of the state government relating to local finance.

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[51] *Laws of New York*, 1938, ch. 369; *Acts of Virginia*, 1938, ch. 124; Winston W. Crouch, "Charter Revision in Los Angeles," *National Municipal Review*, Vol. 27 pp. 379–380 (July, 1938).

[52] *Acts of New Jersey*, 1938, ch. 158. See *supra*, "Finance."

[53] Mr. Walter R. Darby, named in the act as first commissioner of local government, had been the administrator of the state's legislation regulating local finances for more than 20 years, first as commissioner of municipal accounts and later as state auditor. See *Local Government Acts, 1938* (Memorandum B, New Jersey Citizens' Committee for the Princeton Local Government Survey), p. iii.

Kentucky's county debt act of 1938 constitutes another step in the development of central supervision of county finances in that state. Henceforth any county bond issue which will bring the total indebtedness of the county above one-half of one per cent of the assessed valuation of taxable property must have the approval of the state commissioner of revenue. Counties issuing state-approved bonds must turn over their sinking funds for management by the state commissioner of revenue, and any other county may, at its option, participate in the central sinking fund arrangement. It is the duty of the commissioner of revenue, upon request, to assist counties in devising debt reorganization plans.[55] A constitutional amendment in New York provides that existing local indebtedness in that state may be refunded only with the approval of the state comptroller.[56] Mississippi increased the inspectional force of the state auditor of public accounts to enable that official to make annual audits of state and county offices.[57] Formerly such audits were required to be made at least once every four years. Through a newly-established division of administrative service, the Michigan state tax commission has been developing a program of assistance to local assessors. An assessor's manual has been prepared, regional conferences sponsored, and trained field men provided to assist local assessors with respect to difficult appraisal problems.[58]

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[54] See *supra*, "Finance."

[55] *Acts of Kentucky*, 1938 (1st spec. sess.), ch. 31; James W. Martin, "State Supervision of County Finance in Kentucky," *National Municipal Review*, Vol. 28, pp. 149–155 (Feb., 1939). See *supra*, "Finance."

[56] *Constitution of New York* (1938), art. VIII. See *supra*, "Finance."

[57] *Laws of Mississippi*, 1938 (reg. sess.), ch. 157.

Voluntary state-local coöperation is envisaged in an act of the New York legislature authorizing the state department of social welfare to permit local welfare units to purchase under its contracts, or to act as purchasing agent for local units at their request. An example of voluntary coöperation in practice is afforded by the civil service examinations administered jointly by the California state personnel board and the personnel agency of San Diego county for positions common to both governments.[59]

Federal-Local Relations. Contacts between local governmental units and the federal government continued to be of major importance and tended to become even more extensive. In states having enacted approved legislation providing for county administration, counties continued to be the recipients, under the Social Security Act, of federal funds for old-age assistance, aid to dependent children, aid to the blind, and public-health work. The effectiveness of the federal stimulus in the field of rural health work is indicated by the fact that, by June 30, 1938, there were 1,165 counties under the direction of full-time health officers, as compared with 594 counties on January 1, 1935.[60] Through the Soil Conservation Service of the Department of Agriculture, the federal government continued to assist local soil conservation districts in their soil-conservation and erosion-prevention activities. By July 1, 1939, "memoranda of understanding" providing for such assistance had been entered into by the federal agency with 113 districts in 23 states.[61] Rural dwellers continued to benefit from projects of the Works Progress Administration, Civilian Conservation Corps, and Rural Electrification Administration.

As previously mentioned,[62] two Tennessee counties during the year acquired electric distribution systems and entered into contracts with the Tennessee Valley Authority for the purchase of power to be resold by the counties to private consumers and municipal corporations within their borders. The contracts between the counties and the Authority prescribe resale rates and provide that, upon request therefor by the local units, the Authority shall render advice on problems of personnel and administration.[63] By its decision in Duke Power Company v. Greenwood County,[64] the United States Supreme Court seems to have cleared the way of possible constitutional obstacles to federal loans and grants to counties for utility purposes. The case involved suit by the power company to enjoin the carrying out of a loan-and-grant agreement between the Public Works Administration and Greenwood county, South Carolina, to enable the county to construct and operate an electric plant in competition with the plant of the company. Basing its decision upon the authority of Alabama Power Company v. Ickes,[65] in which the facts were essentially similar except that the P.W.A. contracts involved were with cities rather than counties, the Court held that, since the proposed competition by the county was lawful and invaded no legal right of the power company, the company was without standing to maintain the suit.[66]

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[58] Note in *Public Management*, Vol. 20, pp. 219–220 (July, 1938).

[59] *Laws of New York*, 1938, ch. 48; note in *Public Management*, Vol. 20, p. 82 (Mar., 1938).

[60] *Third Annual Report of the Social Security Board, 1938*, p. 131.

[61] Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See this REVIEW, Vol. 32, p. 956; *supra*, "Areas."

[62] *Supra*, "New Functions."

The regular 1938 session of the Mississippi legislature enacted several measures contemplating coöperation between the counties of that state and the federal government. One such measure authorizes designated counties to coöperate with the federal government in the prevention of soil erosion; another empowers counties and other governmental subdivisions to appropriate money to aid in establishing a federal research laboratory in the state; a third provides that the boards of supervisors of certain counties may enter into agreements with the federal government to provide necessary lands for federal flood-control projects and to maintain completed flood-control works; while a fourth authorizes the state tax commission to distribute among the state, counties, and other taxing units sums of money received from the federal government in lieu of taxes on lands acquired in Mississippi for rural rehabilitation and farm security projects.[67]

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[63] Lyndon E. Abbott, "Tennessee Counties Distribute Electric Power," *National Municipal Review*, Vol. 28, pp. 169–170 (Feb., 1939).

[64] 302 U.S. 485, 82 L. Ed. 381, 58 Sup. Ct. 306 (1938).

[65] 302 U.S. 464, 82 L. Ed. 374, 58 Sup. Ct. 300 (1938).

[66] Also of interest in this connection is the decision of the United States Supreme Court in the more recent case of Tennessee Electric Power Company v. Tennessee Valley Authority, 83 L. Ed. 341, 59 Sup. Ct. 366 (1939), holding that utility companies operating under non-exclusive franchises are without standing to question the validity of T.V.A. contracts for the sale of power to cities to be resold in competition with the plaintiffs. While the contracts involved in this case were with cities, the ruling would seem broad enough to cover similar contracts for sale of T.V.A. power to counties.

[67] *Laws of Mississippi*, 1938 (reg. sess.), chs. 135, 149, 285, 314.

FOREIGN GOVERNMENT AND POLITICS

Emergency Legislation in Great Britain. In the light of the recent enactment of the Emergency Powers (Defense) Bill[1] into law, the question of how Great Britain has dealt with national crises in the past is both timely and significant. The crises which will be touched upon here are (1) the World War, 1914–18; (2) the coal strikes of 1921; (3) the general strike of 1926; and (4) the new war of 1939. All of these situations led Parliament to give virtually unlimited powers to the crown for purposes of defense of the realm.

The first great grant of special powers to the British executive to interfere with common law rights came in 1914 and 1915 with the passage of the Defense of the Realm Acts, commonly referred to as "DORA." The earliest of four Defense of the Realm bills was introduced and passed through all of its stages in the House of Commons on August 7, 1914, three days after Britain's entry into the World War. The first act of the series conferred upon the crown power to issue regulations authorizing trial by courts-martial of any person contravening any of the provisions of such regulations as were designed to prevent secret communications or to secure the safety of the realm's docks, harbors, or railways, "in like manner as if such persons were subject to military law and had in active service committed an offense under section five of the Army Act."[2] There were some, however, who felt that capital punishment as provided for in section five of the Army Act was a weapon too dangerous to place in the hands of a court of summary jurisdiction. It was not surprising, therefore, that in consolidating the Defense of the Realm Acts in 1914, English legislators should have secured to persons convicted in a court of summary jurisdiction immunity from life imprisonment and the penalty of death. From this it followed that the accused would be able to appeal to a court of quarter sessions, a civil tribunal which tries cases of persons accused of serious offenses not punishable by death or life imprisonment.

The second Defense of the Realm Act widened the scope of the first one by extending the power of military authorities to all areas in which trade was being carried on. The only opposition voiced in Parliament came from Mr. Trevelyan, Liberal M.P., who considered that the government was infringing upon the individual's liberty of speech.[3] Finally, on November 27, the two foregoing acts were consolidated and amended in the Defense of the Realm Consolidation Act. This measure was, more or less, an introduction of statutory martial law into England.

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[1] For full text, see *The Times* (London), Aug. 25, 1939.

[2] 65 *H. C. Deb.* 5 S. 2192. Section 5 of the Army Act reads: "Provided that when it is proved that the offense is committed with the intention of assisting the enemy a person convicted of such an offense by a court-martial shall be liable to suffer death."

[3] 66 *H. C. Deb.* 5 S. 87–88.

One of the new amendments giving the crown power to prevent the spread of false reports likely to cause disaffection took on a very ominous appearance in the eyes of such men as Mr. Trevelyan, who thought such an instrument too dangerous for the nervous hands of a government at war. The House of Lords—the very body which Mr. Trevelyan's party had almost legislated out of existence in 1910–11—subjected "this tremendous and unprecedented extension of military law" to ruthless criticism and succeeded in four months' time in restoring the right of trial to British subjects. The alien subject, however, was left under complete military jurisdiction.[4]

The courts interpreted the Defense of the Realm Acts broadly, and held that they vested discretionary power to deal with the necessities of the situation. In Rex v. Halliday,[5] Zadig, a naturalized British subject of German birth, was imprisoned without trial, and justly so, said the judges, under Regulation 14b of the Defense of the Realm Consolidation Act, which provided that any person of hostile origin, might, if interned, be treated as a prisoner of war.

In matters of compensation for premises taken by the crown for purposes connected with the defense of the realm during the war, the cases of A. G. v. the DeKeyser's Royal Hotel[6] and *In re* a Petition of Right[7] are interesting and enlightening. The first case concerned a hotel which was taken by the crown in 1916 under the regulations of D.O.R.A. The hotel was held until the close of the war, at which time the management petitioned for compensation for the compulsory occupation of their premises. The Defense of the Realm Consolidation Act provided in subsection 2 that "any such regulations may provide for the suspension of any restrictions on the acquisition or use of land, or the exercise of the power of making by-laws, or any other power under the Defense Acts, 1842 to 1875."[8] The courts ruled that since the paying of compensation could not be regarded as a restriction, but rather as a consequence of the taking, the suppliants were entitled to the compensation provided by the Defense Acts. The second case, *In re* a Petition of Right, concerned the seizure of an aërodrome. The judges declared that the seizure was a matter of public necessity, and that in time of war the crown or its servants, can, by virtue of the royal prerogative, seize without compensation any land deemed necessary for the defense of the realm. It will be noted that in the case of DeKeyser's Royal Hotel the authorities definitely seized the premises under the D.O.R.A. regulations and were obliged to pay indemnity as provided for in those acts, but that in the latter case the seizure was made in the name of the royal prerogative and hence compensation was a matter of grace rather than of compulsion. The whole question of the royal prerogative has been left in a nebulous state We have cases such as the one above in which judges uphold the authority of the royal prerogative, and yet Parliament seems to distrust the instrument, for in 1914 it passed legislation giving the crown powers which might legitimately have been used under the royal prerogative. Parliament pays homage to the dignity of the royal prerogative, but at the same time is jealous of its authority.

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[4] *Encyclopedia Britannica*, Vol. 14, p. 985.

[5] Rex. v. Halliday, *Ex parte* Zadig (1917). Kier and Lawson, pp. 13–14.

[6] Attorney-General v. DeKeyser's Royal Hotel (1920). Keir and Lawson, p. 325; Wade and Philips, pp. 70–72.

[7] *In re* a Petition of Right (1915). 3 K. B., p. 649.

[8] 5 and 6 Geo. 5, c. 8.

The regulations issued under D.O.R.A. did not pass out of existence at the signing of the Treaty of Versailles, but continued in operation until August 31, 1921, when, "except so far as they continued in Ireland in the form of Restoration of Order in Ireland Regulations, the Defense of the Realm Regulations finally expired on August 31, 1921."[9] This was the date set for the end of the war by His Majesty in accordance with the power granted him by the Termination of the Present War (Definition) Act, 1918.[10] Vestiges of D.O.R.A. were left in existence, however. The continued closing of the "pubs" at ten o'clock was a carry-over from the war-time regulations, as was the interesting case in 1926 of several ice cream vendors being fined for selling ice cream after eight o'clock in the evening.[11]

With serious labor troubles looming on the horizon in 1920, Prime Minister Lloyd George appeared in the House of Commons with a bill conferring extraordinary powers upon the crown in order that it might deal with peace-time crises without bringing war-time measures into use. "Panic legislation" some have called it; for the bill which became the Emergency Powers Act, 1920, was introduced in the House of Commons on October 22 and received the royal assent only seven days later. The Emergency Powers Act, 1920, in its final form, conferred on His Majesty power to issue a proclamation of emergency whenever any person or group of persons should have taken action which might be calculated "to deprive the community of the essentials of life." The action so taken must be "of such a nature and on so extensive a scale as to affect the community by interfering with the supply and distribution of food, water, fuel, or light, or with the means of locomotion." Such a proclamation cannot remain in force more than one month; but it may be succeeded by another at or before the end of that period.[12]

Clause 2 of the statute gives the crown power by orders-in-council to make whatever regulations, other than entailing compulsory military service or industrial conscription, might be deemed necessary to secure the essentials of life to the nation. It may very well have been that the authors of the act, by inserting the proviso on compulsory military service, hoped to avoid any such development as took place in France when Premier Briand placed all railway strikers in military service, and thereafter dealt with them as under military rather than civil jurisdiction.[13] For the sake of those who considered that the act was aimed at trade unions, a clause was inserted to the effect that no regulation should make it an offense for a person or group of persons peacefully to persuade others to strike. It was further laid down in the act that all regulations should be placed before Parliament, and that unless both houses of Parliament should provide for their continuance, they should automatically expire in seven days. The offenses against the regulations were to be tried by courts of summary jurisdiction, and the maximum penalty which might be inflicted was three months' imprisonment or a fine of one hundred pounds, or both such fine and imprisonment. Section 2 insured the subject a right to trial by jury; while section 4 provided that any of the regulations might be altered or revoked at any time by Parliament, though revocation by Parliament was not to affect the previous validity of the regulations. In its final clause, the act declared itself not applicable to Ireland.[14]

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[9] *Statutory Rules and Orders*, by Authority (London, 1921), p. 153.

[10] W. H. Aggs, *Chitty's Statutes of Practical Utility* (London, 1919), p. 539.

[11] *The Times* (London), Sept. 25, 1926.

[12] 10 and 11 Geo. 5, c. 55.

The chief ground of hostility of the opposition to the Emergency Powers Bill was the inappropriateness of thrusting such legislation upon Parliament at the critical hour of a strike in the coal fields. Mr. Adamson, chairman of the Parliamentary Labor party, asked for immediate withdrawal of the bill lest it interfere with the coal strike negotiations, and later he sounded general disapproval of the bill when he said; "I do not think panic legislation of this kind can be good legislation."[15] The bill was generally felt by Liberal and Labor M.P.'s to be very risky, and very elastic in its phrasing; but, as one writer expressed it, the air of the opposition was let loose in a bag so large that there was little likelihood of an explosion.

Lloyd George, then prime minister, after expressing fear of the so-called Triple Alliance, i.e., an agreement of the transport, coal, and railway industries to help one another in the event of a strike, set the stage for going into committee of the whole.[16] The amendments of importance which proved acceptable to the government were two formal limits upon the executive's powers, namely, no conscription of labor and the right of peaceful striking and picketing. On October 28, the Emergency Powers Bill as amended in the Commons was sent to the House of Lords, where Viscount Milner, in the absence of the Lord Chancellor, took charge of it.

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[13] F. A. Ogg, *European Governments and Politics* (New York, 1934), p. 517.

[14] 10 and 11 Geo. 5, c. 55.

[15] 133 *H. C. Deb.* 5 s. 1406.

[16] 133 *H. C. Deb.* 5 s. 1453.

Viscount Milner affirmed the government's need for emergency powers of a civil nature, and urged immediate passage of the bill. The sage and liberal-minded Lord Buckmaster, however, was more eager to consider the bill than to pass it. He felt that since some governments are inclined to be more nervous than others, the Lords should consider the bill very carefully lest they should see a misuse of the powers granted. The amendment of importance contributed by the Lords was "that no such regulations shall alter any existing procedure in criminal cases or confer any right to punish by fine or imprisonment without trial."[17] All Lords' amendments were accepted by the House of Commons, and the bill received the royal assent, October 29, 1920.

The first application of the Emergency Powers Act came five months after its passage, when the crown declared that in view of the cessation of work in the coal mines a state of emergency existed. Seven days later, Sir Robert Horne, Chancellor of the Exchequer, moved in the House of Commons that the regulations made by His Majesty in council under the Emergency Powers Act, 1920, continue in force one month from the date of the proclamation.[18] In this instance, the minority soon saw the futility of trying to avert adoption of the motion, and turned its attention to those regulations deemed particularly obnoxious. The regulations against which Liberal and Labor members fought most aggressively were: Regulation 16, which gave the Postmaster-General power to censor messages; Regulation 19, which stated that any person attempting or doing anything likely to cause disaffection among the civilian population was to be deemed guilty of an offense against the regulations; Regulation 20, which empowered the authorities to prohibit any meeting which they thought likely to give rise to disorder; and Regulation 27, which gave the police power to arrest without warrant any person known or suspected to be guilty of an offense against the regulations.

Mr. Neil Maclean, Labor M.P., in commenting upon Regulation 19, said: "Even the magistrates and judges who are trying those cases differ materially as to what they believe sedition amounts to. We find in one part of the country men sentenced for circulating a certain leaflet and in another part of the country men being dismissed when charged with circulating the same leaflet. . . . "[19] During May, 1921, there were 21 offenses against Regulation 19, and it is interesting to note that only two of the number were charged against miners.[20] John Hedley, Robert Stewart, Jack Villiers, and Samuel Inkpin—the latter being the well-known secretary of the Communist party—were sentenced to imprisonment for offenses against the regulation.[20a] Another regulation to which Labor leaders objected was Regulation 22, which gave the executive power to use soldiers and sailors in the coal mines. This regulation, it was felt, authorized conscription of labor—something expressly forbidden by the Emergency Powers Act. But, despite Liberal and Labor efforts to remove it, the regulation was retained. With only sporadic bursts of opposition from a few, the state of emergency proclaimed on March 31, 1921, was continued by further proclamations until Parliament allowed it to expire on July 27, 1921.

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[17] 42 *H. L. Deb.* 5 s. 111 and 123.

[18] 140 *H. C. Deb.* 5 s. 130.

[19] 142 *H. C. Deb.* 5 s. 1277.

[20] 142 *H. C. Deb.* 5 s. 616.

[20a] *The Times* (London), May 9, 10, 13, 21, 1921.

A more thoroughgoing test of the effectiveness of the Emergency Powers Act was made on August 25, 1926, when His Majesty proclaimed that the cessation of work in the coal mines constituted a state of emergency within the meaning of the act of 1920. Seven days later, the Home Secretary, Sir William Joynson-Hicks, moved that the regulations made under His Majesty's proclamation be continued in force for one month. The Secretary then went on to say that peaceful picketing did not mean anything short of using brutal force. He unhesitatingly defined "booing" as illegal. At this point, Ramsay MacDonald, Labor M.P., voiced disapproval of talk which he felt would influence local justices of the peace to action which would make a mountain out of a molehill. The majority will prevailed in the House, and not only was Sir Joynson-Hicks' definition of "booing" accepted, but he was allowed to speak for an hour and a half on his views of the laws of the land.

Sir Henry H. Slesser, member of His Majesty's Opposition, moved to insert the words "other than Regulations 21 and 22" into the motion. Regulation 22 was the same as Regulation 20 of the regulations made under the Emergency Powers' Proclamation of 1921; namely, that the police might prohibit any meeting which they thought likely to cause sedition. Regulation 21 was a repetition of the 1921 Regulation 19, which made any act likely to cause sedition an offense against the regulations.[21] There had already been, as Sir Henry Slesser pointed out, 29 arrests under Regulation 21, and most of these he considered to have been unnecessary. To substantiate his argument that the government was carrying its definition of intimidation too far, he said that a letter to an employer stating that his shop was to be picketed was written in language so abusive as to make the employer afraid, and yet the letter was not held to be an act of intimidation under the picketing law of 1875.[22] The opposition felt that these regulations were restrictions upon personal liberty, wholly out of keeping with peace-time legislation. But it was the opinion of the majority that the executive had need for both of the challenged regulations in order to deal with a serious crisis; and the amendment was defeated by a large majority.

On November 26, 1926, the regulations received their fourth lease of life. The Home Secretary, after being asked to report on the arrests made

[21] *Statutory Rules and Orders*, by Authority (London, 1921), pp. 499–500.

[22] 199 *H. C. Deb.* 5 s. 42.

under the Emergency Powers regulations, announced that during the month of November there had been 511 arrests, 66 had resulted in sentences of imprisonment, 184 in fines, while 175 accused had been discharged and charges against 86 were still pending.[23] Some of the arrests came as a result of the illegal sale or consumption of essential goods; others were the result of lighting shop windows in the daytime. There were, however, a fair number of arrests of a more spectacular sort. For example, Theodore Ainley was sentenced to 28 days' imprisonment for appealing to a group of persons to tell any relatives they might happen to have in the Army or Navy to refuse to shoot anyone in any industrial strife—for they, the soldiers and sailors must remember that they also were reared in the laboring ranks. Arthur Pope, a Portsmouth laborer, was fined £10 for saying that the police were "battering" innocent and starving miners for nothing at all, and he for one was looking forward to the day when Parliament would investigate such atrocities.[24]

The cases mentioned would appear to indicate that the powers given to the crown by the Emergency Powers Act were no less dictatorial than those given under the Defense of the Realm Acts. Both applications of the Emergency Powers Act, 1920, show that the right to strike and to picket peacefully, conceded to the opposition after much wrangling, were as useful in actuality as sabers against machine-gun fire. Any assembly which in the eyes of the police was likely to cause sedition could be dispersed. What if the assembly should be a trade union out on strike? There can be no conscription of labor, and yet the crown could under the emergency regulations use soldiers and sailors for whatever purposes it desired. It is perhaps safe to conclude that for purposes of defense of the realm during peace-time crises the statutory authority given the crown by the full and detailed provisions of the Emergency Powers Act is adequate and has, for all practical purposes, superseded both the royal prerogative and martial law. Both these last-mentioned methods of dealing with emergencies seem to have fallen, like so many other English traditions, into the realm of the obsolete—their dignity preserved, but their authority distrusted.

The general strike of 1926 frightened the British. They suffered many inconveniences during the brief period of the strike, and it was generally felt that a general strike was just not "cricket." Under such circumstances, it was not difficult for them to support proposals to legislate the general strike out of existence. On May 6, 1926—three days after the general strike was called—Sir John Simon declared in the House of Commons that the strike was illegal, since it was directed—consciously or not did not matter—against the government and the community.[25] Five days later, in deciding the case of National Sailors' and Firemen's Union

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[23] 200 *H. C. Deb.* 5 s. 713.

[24] *The Times* (London), Sept. 27, Oct. 1, 1926.

[25] Sir John Simon, *Three Speeches on the General Strike* (London, 1926).

v. Reed,[26] Judge Astbury reiterated Sir John's declaration on the illegality of general strikes. But this was not enough to satisfy legislators or public; they must have the definition embodied in a statute.

The Trades Disputes and Trade Unions Act, 1927,[27] declared illegal any strike or lockout which "has any object other than, or, in addition to, the furtherance of a trade dispute within the trade or industry in which the strikers are engaged," or is "designed or calculated to coerce the government either directly or by inflicting hardship upon the community." Provision was made also for preventing any person or group of persons from giving money to support an illegal strike, or from inciting others to take part in such a strike. Thus was the determination of a people, more particularly of the middle class, put into legal phraseology.

In 1914, 1920, and 1927, legislation was enacted for the purpose of handling war- and peace-time crises; and on August 24, 1939, three days after the announcement of the German-Russian pact, British legislators believed need to have arisen for legislation to equip the nation's executive to care for another possible war-time crisis. Accordingly, Sir Samuel Hoare, Home Secretary, acting on behalf of the government, introduced the Emergency Powers (Defense) Bill, 1939. The measure was passed the same day it was introduced; and it authorizes the crown to issue whatever regulations may be deemed necessary for defense of the realm, to acquire property summarily, to enter and search any and all premises without warrant, and to provide for court trials *in camera*. "Wide, comprehensive, and flexible"—such were the words which Sir Samuel Hoare used to describe the crown's new powers. There was, however, virtually no opposition to the bill's passage. All political parties seem convinced that in a national emergency liberty must be abandoned temporarily for the sake of unity and protection. Such a conclusion was arrived at during the World War, 1914–18, only after lengthy and heated debates. The enactment of several Defense of the Realm Acts was, however, followed by similar actions in the strikes of 1921 and 1926; and the principle now appears firmly established in the minds of all Britishers.

The Emergency Powers (Defense) Act, 1939, with its democratic safeguards—i.e., that nothing in the act may be construed to authorize compulsory military, naval, or air force service, industrial conscription, or courts-martial of civilians, and that Parliament may revise or annul any regulation issued under the act—confers little power on the crown that it could not have exercised under the Emergency Powers Act, 1920. But in enacting this new emergency legislation for a twelve-month rather than a one-month period, Parliament has further acknowledged and stressed the executive's need for unusual powers to deal with national crises.

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[26] National Sailors' and Firemen's Union v. Reed (1926), 95 L. J., ch. 192.

[27] 17 and 18 Geo. 5, c. 22.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Dr. Frank J. Goodnow, former president of Johns Hopkins University and first president of the American Political Science Association, died in Baltimore on November 15. A memorial will appear in the next issue of the REVIEW.

On account of the war, Professor Jules Lespes, of the University of Brussels, was unable to join the University of Chicago for the autumn quarter as planned.

At the State University of Iowa, Dr. George F. Robeson has been promoted to a full professorship, and Dr. J. T. Johnson has been added to the staff as instructor.

Dr. John W. Brewer, who formerly taught at Connecticut State College and at Dartmouth, has been appointed associate professor of international law at the George Washington University.

Since returning to the University of Nebraska, Dr. Harold W. Stoke has been serving as dean of the graduate school and teaching half-time in the department of political science.

Dr. J. Harold DeNike, formerly instructor in business administration in the Graduate School of Business Administration at Harvard, has been appointed assistant professor of political science at the University of Cincinnati. His work is primarily with the graduate students in training for public service.

Dr. M. Nelson McGeary has been appointed an instructor in political science at Pennsylvania State College.

Dr. Richard C. Spencer is spending the year at the University of Cincinnati under appointment as visiting professor of political science.

Mr. Maure Goldschmidt has been appointed instructor in political science in the College, University of Chicago.

Dr. Donald S. Strong, formerly at Western Reserve University, has accepted an instructorship at the University of Texas.

At the University of Pennsylvania, Mr. Robert D. Seltzer has been added to the staff as an instructor in American government.

Dr. Lee S. Greene's promotion at the University of Tennessee, erroneously reported in the last issue as from instructor to assistant professor, was instead from the latter rank to that of associate professor.

Dr. Lyndon Abbott, formerly with the Tennessee Valley Authority, has been appointed consultant on public administration projects of the research and records division of the Works Progress Administration.

Professor R. Taylor Cole, of Duke University, will teach at the University of Nebraska during the summer session of 1940.

Professor Christen Jensen, head of the department of history and political science, is acting president of Brigham Young University during a year's absence of President Franklin S. Harris.

While on leave during the current semester, Professor Hugh L. Elsbree, chairman of the department of political science at Dartmouth College, is carrying on research in the library of the Federal Power Commission in Washington.

The National Municipal League has appointed a committee to revise its model state constitution, with Professor W. Brooke Graves, of Temple University, as chairman. The committee held its first meeting during the sessions of the League at Indianapolis in November.

At the first fall conference of the University of Omaha's institute of government, a series of five addresses on state and local finance was presented by Professor James W. Martin, director of the bureau of business research at the University of Kentucky.

Mr. Harold W. Davey, who received his doctorate in political science at Harvard University last June, is now an instructor in social science at the Armour Institute of Technology, Chicago.

Recent appointments of recipients of the doctor's degree at the University of Chicago include James A. Reber, at Wilson Junior College, Chicago; Frank L. Klingberg, at James Millikin University; David Trumen, at Bennington College; and Claude H. Hawley, at the University of Missouri.

Mr. George A. Warp, formerly of Western Reserve University, is giving the lectures in "Introduction to Government," a course offered to pre-law students at the University of Minnesota this year, and Dr. Stefan Riesenfeld, of the Law School of the University, is lecturing on international law in the political science department.

Two new journals devoted to the general subject of public personnel administration have been announced. One—the *Public Personnel Review*—will be published by the Civil Service Assembly of the United States and Canada; the other—the *Public Personnel Quarterly*—under the sponsorship of the New York City civil service commission.

At a "governmental problems" conference on October 31, sponsored by the political science department at Marshall College, the principal speakers were President Clarence A. Dykstra, of the University of Wisconsin, Professor Harvey Walker, of Ohio State University, and Dr. Wallace S. Sayre, of the New York City civil service commission. The conference was well attended, and another is planned for 1940.

Governor Herbert H. Lehman of New York has appointed a special committee on the civil service to recommend a practical plan for transferring as many positions in the non-competitive civil service to the competitive civil service as may be possible. The committee, of eleven members, includes Dr. Howard P. Jones, a member of the New York State civil service commission, Professor Rodney L. Mott, of Colgate University, and Mr. Elliot Kaplan, of the National Civil Service Reform League.

Beginning in 1939, the *Revue Internationale de la Théorie du Droit* (official organ of the Institut International de Philosophie et de Sociologie Juridique), will be issued quarterly, with articles in English, French, and German. The editor is Dr. Rudolf A. Métall of Geneva, and subscriptions (six dollars a year) may be sent to Mr. Einar Munksgaard, Nörregade 6, Copenhagen, Denmark.

For the use of students and instructors in the introductory course, Government 1, the department of government at Harvard University has published a volume containing readings in constitutional law cases as well as in other sources, selected bibliographies, and questions for study. The book, which is over 300 pages in length, also contains the lecture schedule in the course and a list of required and suggested readings, week by week. Copies of the publication may be obtained from the department of government, Harvard University, at the published price of three dollars.

With the publication of its October issue, the *Journal of Social Philosophy*, launched in 1935 in response to a need for a philosophic integration of the social sciences, entered upon its fifth year. The first number for the new year contains leading articles by Charles A. Beard, Ralph Barton Perry, John R. Commons, Max C. Otto, and Georges Gurvitch. The managing editor is Professor Moses J. Aronson, of the College of the City of New York; and the editorial and advisory boards include Professors John Dickinson, Edwin M. Borchard, Francis W. Coker, W. Y. Elliott, and Charles G. Haines.

At the annual conference of the Governmental Research Association held at Princeton University on September 6–9, special stress was placed upon the importance of bureau of research and tax-payers groups from the point of view of citizen-supported investigation, and it was decided to reorganize the Association so as to give emphasis to bureau of research and tax-payers organizations as citizen-supported agencies whose primary purpose is to improve the conduct of government through the impartial and objective compilation and interpretation of facts in the interest of the entire citizenry. In line with this decision, the Association will hereafter enroll as regular members only those agencies which are citizen-supported. To consider a proposal, submitted primarily by Professor Luther Gulick, director of the Institute of Public Administration, a committee was appointed to undertake the setting up of a national organization of persons specially interested in the profession, the science, and the art of public administration. It is expected that the new organization will attract a large number of people, both within and without professional administrative employment; and annual conferences, regional organizations, and possibly a journal are contemplated.

Dr. Cyril Wynne, chief of the Division of Research and Publication of the State Department, died suddenly on September 26 at the age of forty-nine. Dr. Wynne received three degrees, including his doctorate, at Harvard University, and was a member of the California bar. He served as a first lieutenant overseas during the World War and was decorated for gallantry. At the end of the War, he was attached to the American Peace Commission as aide to Colonel House, and in 1919 he entered the Foreign Service, serving for two years as secretary in the American embassy at Tokyo. During 1922–24, and again in 1929, he was an assistant solicitor in the State Department; from 1927 to 1929, he was instructor and lecturer on international relations at Harvard; and since 1929 he had been continuously in the State Department as Assistant Historical Adviser and as chief of the Division of Research and Publication. During his service in the Department, Dr. Wynne also acted as professor of constitutional law and legal history in the Columbia University Law School. Dr. Wynne was an active and enthusiastic member of the American Political Science Association. As a public official, he never lost sight of the professional and academic interests in the public service, and was always generous and effective in promoting coöperation between political scientists and the government. His death is a heavy loss to the public, the State Department, and the Association.

James Fairbanks Colby, former Parker professor of law and political science at Dartmouth College, died in Hanover on October 21. He was born at St. Johnsbury, Vermont, in 1850, was graduated at Dartmouth in 1872, and received his law degree from George Washington (then Columbian) University in 1875. He practiced law in New Haven, Conn., received the degree of master of arts from Yale in 1877, and until 1885 gave courses in history and international law in that university. In 1885, he was appointed to the newly established Parker professorship at Dartmouth, holding this chair until retirement in 1916. For many years he also served as lecturer in jurisprudence and international law at Boston University Law School. Despite the handicap of defective eyesight which for many years obliged him to depend upon readers, he was a distinguished scholar and essayist, a valued correspondent of scholars and civic leaders at home and abroad. He rendered notable services to state and community in such fields as civil service reform and conservation. His manuals, prepared for the state constitutional conventions of 1902 and 1912, have been of great service in New Hampshire affairs. Among other public bequests, his will establishes a graduate fellowship for the benefit of Dartmouth graduates preparing to teach political science and law or enter the public service; and a residuary bequest will eventually be added to the endowment of the chair of which he was the incumbent for so many years.

BOOK REVIEWS AND NOTICES

Federal Administrators; A Biographical Approach to the Problem of Departmental Management. BY ARTHUR W. MACMAHON AND JOHN D. MILLETT. New York: Columbia University Press. 1939. Pp. xiv, 524. $4.50.)

This is a very important book for all concerned with public administration. Diligent fact-gathering, combined with clarifying generalizations based on the trends of practice, make the study one of the most notable inquiries in its field.

The authors first consider the task of leadership in the ten executive departments of the federal government by discussing the needs of departmental management and the aides and advisers involved in this task. The problem of managerial integration is analyzed in terms of the officials who must meet the task. It is, of course, this recognition of the importance of the actual qualifications of individual administrators that gives the book its distinctive value. The authors would like to see career officials in each department designated as administrative under-secretaries and charged with general managerial duties, with supervisory aides serving as their administrative assistants. To aid the Secretary in the formulation of departmental policies, special assistants might be appointed to staff positions of an advisory nature. The point underlying such recommendations is the hope that tendencies now observable may ultimately result in a formal recognition of the differences between administrative and political responsibilities and the need of distinctive positions for both sides.

In Part II, an historical account is presented of the under-secretaries and assistant secretaries who have served in the executive departments. After a careful analysis of these biographical data, the authors conclude that "the prevailingly indifferent record of the assistant secretaries, when considered as administrators, gives point to the belief that these positions should be definitely disassociated from supervisory responsibilities."

For analyzing the bureau chiefs in Part IV, the authors have classified their men in terms of methods of recruitment. Thus the reader is given some understanding of the kinds of men brought to bureau chiefship by promotion, direct recruitment, political preferment, etc. Noteworthy is the fact that "nearly seventy per cent of the bureau heads at the end of 1938 were recruited under merit systems" of some variety. Career status for bureau chiefs is not limited to the so-called scientific agencies. The record shows that formal merit systems have not meant older bureau chiefs nor rigidities in turnover. As standards, the authors stress the need for continuity stimulated by "recurrent freshening"; and especially, on the regulative side, "expertness combined with detachment." The data offered in this volume are weighty evidence that such ends can be achieved through an extension of the merit system if improved by reforms in examining methods.

The only criticism that this reviewer has to offer really arises from the nature of the biographical data itself. How can this mass of detail be used as effective evidence, and yet not swamp the reader with detail? The analytical portions of the study are of great interest and gain great weight from their solid foundation of correlated fact. If the brief career sketches that form the bulk of the volume could have been set off from the analytical treatment, greater incisiveness of argument might have resulted. This problem of presentation is, however, a relatively minor matter.

If the science of public administration is to grow, its development must come through the examination of great masses of concrete factual data drawn from the day-to-day experience in governmental agencies. Here is the raw material within which uniformities, trends, and recurrences must be sought and hypotheses framed. The theories that will serve as guides to action will be those that crystallize and direct the incipient tendencies partially under way. The authors of this study demonstrate the validity of this approach.

Their volume will fulfill many uses. In its breadth and range, it should make administrators better aware of their own relationships. It will prove valuable for academic purposes, and it should be perused carefully by all who look forward to a career in the public service.

PENDLETON HERRING.

Harvard University.

The Administration of Old Age Assistance. BY ROBERT T. LANSDALE, ELIZABETH LONG, AGNES LEISY, AND BYRON T. HIPPLE. (Chicago: Public Administration Clearing House, for the Committee on Public Administration of the Social Science Research Council. 1939. Pp. xiii, 345. $3.75.)

Books on public administration are exciting only if they are muckraking. An account of the administration of old age assistance in the United States might be muckraking. Instead, "in this study an attempt has been made to discover the best practice achieved to date . . . and to describe and analyze this experience for the benefit of those who are responsible for planning and administering state and local programs."

This purpose has been fulfilled excellently. The book is not a manual for old age assistance administrators, but a survey of the diverse practices followed in twelve states in different sections of the country. The states included were selected mainly because they were thought to be most likely to have developed practices worthy of emulation, and the data presented were gathered through extensive field visits. Many of the practices described are criticized freely, and there is no hesitancy in making recommendations. But the book is never dogmatic, and even critical judgments are expressed temperately.

While addressed to the policy-forming officials engaged in old age assistance administration, the book also has considerable value for students of public administration and social security. The treatment is topical, and nowhere is a complete picture given of the legislation and administration in any state. Scattered throughout the book, however, are summary sentences which, when pieced together, give a very interesting picture of old age assistance administration as it has developed to date.

While the federal government pays one half of the cost of old age assistance, the degree of federal control is slight. "The state welfare agency today bears the main responsibility for the effectiveness of the old age assistance program," and in all states—including those in which there is, nominally, direct state administration—there is some degree of local participation in administration. Conversely, even in states which have vested the administration of old age assistance in the local governments, subject to state supervision, the state agency has assumed some direct administrative functions. Similarly, the degree of centralization seems to bear no relation to the percentage of the cost of old age assistance borne by the state government.

There is much to criticize about old age assistance administration on all levels of government. The Social Security Board has allowed representatives of four of its bureaus to contact the state agencies independently, with much resulting duplication and some contradiction. The state administrative programs are still in transition and no standardized plan is evolving. "Many employees administering old age assistance within the localities are not equipped for the work." Some of them "are no more enlightened than the old group of poor law officials who made poor relief administration a national disgrace."

Conditions, however, are improving. "Considerable progress has been made in developing effective organizations." It is particularly gratifying that it is everywhere coming to be realized that "service to needy human beings which is both adequate and flexible cannot be attained through operations that are prescribed in minute detail by a distant central office." Very happily, also, what the authors considered the most serious evil in old age assistance administration, the incompetency and lack of understanding of local administrators, is now in a fair way toward correction, through the amendment to the Social Security Act recently passed by Congress, and requiring the states, as a condition of receiving federal aid, to establish standards, acceptable to the Social Security Board, for the selection of state and local personnel on a merit basis.

EDWIN E. WITTE.

University of Wisconsin.

Grants-in-Aid Under the Public Works Administration. BY J. KERWIN WILLIAMS. (New York: Columbia University Press. 1939. Pp. 292. $3.75.)

A startling variety of new administrative techniques has been developed since March 4, 1933. Offhand, one thinks of N.R.A. code authorities, A.A.A. county allotment committees and marketing quota referenda, soil conservation districts, the National Resources Planning Board, the Tennessee Valley Authority, and the National Emergency Council. Fortunately, students of administration have been lagging but slightly behind these developments, so that, starting in 1935, a steady stream of monographs has brought to political scientists keen analyses of the emerging administrative problems.

Transformation of the relationships among federal, state, and local governments has been one of the most significant of these changes. Especially noteworthy has been the establishment of direct contact between the federal government and local governments—the state governments being thereby "short-circuited." Dr. Williams' excellent volume is essentially a study of the Public Works Administration's contribution to this new relationship—grants-in-aid made directly to local governments. She discusses many matters of interest to political scientists generally: the reasons for by-passing the state governments in the grant and loan program; the criteria for approval of projects and distribution of grants and loans; the early centralization and more recent regional decentralization of the organization; reasons for the aggravating delay in getting projects approved and in operation; the techniques used by the P.W.A. to enforce compliance with federal regulations after a project has already been approved and initiated; the increased use of revenue bonds and the creation of special "authorities" to evade debt limitation statutes; the rôle of the P.W.A. in advising on or lobbying for adequate state enabling legislation; and the desirability of a permanent public works agency.

Dr. Williams has performed a scholarly and realistic piece of research, which she presents in an interesting fashion. She shrewdly distinguishes between what the procedures were on paper and what actually happened. At the same time, her soundness of judgment is evidenced by her relegation of several newspaper *causes célèbres* to the footnotes with a suggestion that they were atypical. The few adverse criticisms that are warranted do not substantially detract from the volume's great value. At times, the text bogs down in detail; sometimes, too, the reader loses track of the several chronological phases of the P.W.A. In the last chapter's footnotes *infra* is consistently misused to refer to preceding chapters. Despite these minor flaws, the book will be invaluable to all students of public administration.

JAMES W. FESLER.

University of North Carolina.

Civil Service Law. By Oliver P. Field. (Minneapolis: University of Minnesota Press. 1939. Pp. ix, 286. $5.00.)

The formal study of administrative law has tended to concentrate on the exercise of administrative discretion in government control of business. While it is true that Freund and Goodnow perceived a wider orbit, legal scholarship has for the most part delimited the field to the conception presented in Landis' *The Administrative Process*. This latter book, while a splendid contribution, gave to the generic term "administrative process" a very much narrower purview than would the public administration group among political scientists.

Some students of public administration have seen the digests teeming with decisions bearing upon public management as distinct from regulation. The general emphasis on improvement of administration during the last quarter-century has required the courts to decide on such questions as integrated budgetary control, administrative reorganization, centralized purchasing, and many other innovations. The orthodox law of public officers has been supplemented by a host of cases on civil service and personnel.

There have been legal scholars aware of the vast body of decisions, but questioning the existence of any common law in them. It has been said that such cases consist of statutory interpretation on divergent questions, each unique to its local situation. There are nevertheless others, among them official groups in the technical specialties, who have desired to see synthesis attempted.

Professor Field's book is a commendable effort to bring about such a synthesis in the law affecting civil service. If concrete and definite principles seem elusive, this is not the fault of the author. While civil service is two-thirds of a century old, it is just now entering the professional and technical stage. Furthermore, the commentator has always played an extremely important rôle in the development of the common law. That is why Professor Field has done a very worthy thing in bringing these decisions together in a single volume of running comment. Not the least of his contributions is an excellent organization and arrangement of subject-matter which may serve as a guide for future treatment of the subject.

John M. Pfiffner.

University of Southern California.

Inside the Department of State. By Bertram D. Hulen. (New York: Whittlesey House. 1939. Pp. xiii, 328. $3.00.)

Mr. Hulen is not officially connected with the State Department, so that this is a book by an outsider looking in. Nevertheless, as a newspaper correspondent attached to the Department for many years, representing first the Associated Press and, since 1926, the New York *Times*, he has had exceptional opportunities for observing the machinery of the Department in operation. He uses the term "State Department" in the broad sense so as to include also the foreign service. The author is generally well-informed and urbane, and the book is written in an entertaining and readable style. It is descriptive and sympathetic, even laudatory, rather than critical. Some picturesque aspects of the foreign service are presented, and the reader is given an insight into the mechanical operation of the State Department and the multifarious activities which it undertakes. On page 31 is printed a useful diagram of the organization of the Department, and in Appendix I is given a list of the principal officers of the Department at the time the book was published. Appendix II contains a list of the secretaries of state since 1789, only two of whom (Bryan and Kellogg) hailed from west of the Mississippi River. Two other appendices (each also numbered II and not listed in the Contents) contain lists of the counselors and under-secretaries of state and of the chairmen of the Senate Committee on Foreign Relations.

The author gives some account of the influence of public opinion upon the policies of the State Department and, on the other hand, describes the press conference of the Secretary as a "powerful instrument of politics and diplomacy" (p. 135) and "an effective substitute for the system of interpellation of cabinet ministers in parliamentary governments." No pretense is made of giving any systematic account of the content of American diplomacy. Nevertheless, a good deal of space is devoted to a sometimes rambling description of various incidents drawn from the history of our foreign relations. The somewhat fragmentary character of this description is due to the fact that it is introduced primarily for the purpose of illustrating the various activities of the Department.

Although quotations from prominent men are sometimes introduced, the book contains no citations or footnotes. Moreover, there is no bibliography, though it seems probably that the files of the New York *Times* have served as the source of much of the material. The book will prove useful, especially to the general reader, who will find here an interesting and popular description of that important organ of our government which is sometimes called the "Department of Peace."

JOHN M. MATHEWS.

University of Illinois.

The Way Forward; The American Trade Agreements Program. BY FRANCIS BOWES SAYRE. (New York. The Macmillan Company. 1939. Pp. xiv, 230. $2.75.)

This book is the outgrowth of a series of articles and speeches which the author has prepared in defense of the program which he, as Assistant Secretary of State in charge of trade agreements, has carried forward.

There is an answer here for almost every argument that has been made against the trade agreements. The author deals with such questions as the constitutionality of the act, the "most-favored-nation" policy, and the effects of the agreements upon labor, agriculture, and the balance of trade. He presents no hodge-podge of political platform perorations, but a fairly systematic study, showing in scholarly way how trade agreements are made and what they look like, as well as something of their effect. The book will dispel much of the fog that has obscured the program. The style is simple, objective, and straightforward.

Mr. Sayre justifies the trade agreements program, not by dealing in abstractions, but through the use of facts and figures. It is true that the program up to the present has fallen short of what its sponsors originally hoped in the way of minimizing economic nationalism and restoring international trade. Yet during its brief existence, foreign trade has increased, and in some instances, the increase has quite noticeably been the result of trade agreements. Furthermore, our relations with the nineteen countries with which agreements have been concluded have greatly improved. If the hopes of the sponsors of the program have not been fully realized, neither have the fears of those who have sought to discredit the trade-agreements plan. There has been no opening of the flood-gates to foreign imports.

The author's conciseness will please his readers. But in making the text both brief and interesting enough for the lay reader, he has, perhaps purposely, made some omissions which may prove disappointing to those with professional interests. The political scientist may wish that Mr. Sayre had given a fuller picture of the interdepartmental trade agreements organization and procedure. His intimacy with the program should have made this possible. Certain attorneys who have been trying vainly to get the courts to declare the Trade Agreements Act unconstitutional will find fault with the author's omission of any discussion of the repeal of section 516(b) of the Tariff Act of 1930 (the domestic-producers-protest provision) in so far as it applies to imports under the trade agreements. They are saying that this amounts to denying due process of law to the domestic producers. But this is a technical point, without interest to the lay reader, and as a legal argument rests upon the assumption that domestic producers have a vested right in a protective tariff. The courts have paid little more attention to this claim than has Mr. Sayre.

This little volume is to be particularly recommended to congressmen who will be faced with the problem of either renewing or scuttling the trade agreements program before the expiration of the present act next June.

JOHN DAY LARKIN.

Armour Institute of Technology.

Selected Essays on Constitutional Law. COMPILED AND EDITED BY A COMMITTEE OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS. (Chicago: Foundation Press, Inc., 1938. Four Volumes, incorporating five "books." Vol. I, Bk. 1, pp. xii, 928, and Bk. 5, pp. xxxvi, 832; Vol. II, Bk. 2, pp. lxii, 1546; Vol. III, Bk. 3, pp. liv, 1663; Vol. IV, Bk. 4, pp. lxxiv, 1647. $60.00.)

This fine collection of essays from law reviews and political science journals sums up the work of a generation of scholars in American constitutional law. An unusually successful example of coöperative effort, the four volumes contain five books entitled as follows: (1) The Nature of the Judicial Process in Constitutional Cases; (2) Limitations on Governmental Power; (3) The Nation and the States; (4) Administrative Law; and (5) Taxation.

To this reviewer, it seems that most topics generally accepted by constitutional lawyers as significant have been treated; that the editing committees have selected articles of unquestionable permanent value; that on controverted issues an effective attempt has been made to do justice to both sides; and that an amazingly good job of knitting the materials together has been accomplished.

Perhaps the best way to describe such a treasure chest is to assay one of the nuggets. Book 3, "The Nation and the States," contains 1650 pages, reprinting the substance of ninety learned articles. Part I is devoted to "The Powers of the National Government," and Part II, to "The Effects of the Federal System upon State Powers." Part I contains nine chapters. An extensive chapter on the commerce power contains nineteen articles, both general and specialized, in which classic statements by Cushman, Corwin, Powell, Stern, and others find places. Chapters follow on the judicial power (Cushman), the treaty power (Kuhn, Boyd), acquisition and government of territory (Langdell, Baldwin, Lowell, Coudert), the use of federal taxing power for regulatory purposes (Powell, Cushman), the spending power (eight articles), the money power (two articles), and the admission of new states (one article). Part II is divided into Division A, "The Effect upon State Powers of the Existence of National Powers," and Division B, "The Effect upon State Powers of the Coëxistence of Other States in a Federal System." Division A contains five chapters: "The Concept of Concurrent Power (J. A. C. Grant); "The Commerce Clause as a Limitation on State Legislative Power" (twelve articles: Needham, Powell, McGovney, Bilké, Corwin, and others); "The Commerce Clause as a Limitation on State Judicial Power" (two articles); "The Control of State Action by the Federal Courts" (four articles); and "Miscellaneous Topics" (eight articles). Division B has four chapters: "Territorial Limitations on Jurisdiction of Courts—Full Faith and Credit to Judgments" (ten articles: Sunderland, Scott, Beale, Corwin, and others); "Territorial Limitations on Legislative Jurisdiction—Full Faith and Credit to Statutes" (three articles); "The Policy Against Parochialism" (three articles); and "The Solution of Conflicts Between States" (Judicial Process, J. B. Scott and Powell; Interstate Compacts, A. A. Bruce, Frankfurter, and Landis).

It happens that this collection appears just after a significant turning point in the Supreme Court's jurisprudence, following a thorough public examination of the rôle of the judiciary in the American constitutional system. The course of judicial decisions during the period apparently now closed was characterized by increasing judicial refinement of broad constitutional principles, the constitution itself being viewed by the courts almost exclusively through the case law. This resulted in judicial restrictions on legislatures and executives attempting to evolve new forms of social order. It also produced a judicial literature of dissent, not voluminous but very influential. The period apparently now opening begins as if the more important of these dissents are to become established constitutional law. These tendencies in the jurisprudence all had their counterparts in the scholarly writing of the period, and all are fully represented in the collection under review. In their careful choosing of outstanding analyses of specific constitutional problems by legal writers, the editors have reflected one leading characteristic of scholarly work in constitutional law during the epoch just closed. The setting together of these materials makes the collection a *Summa Theologica* of constitutional law in which both broad principles and their manifold special applications are systematically stated, and conflicts between the general principles themselves are explained if only apparent, and rationalized if real.

Judicial dissent found its counterpart among writers in a significant literature of protest which came largely from a group of teachers of law and of political science. This literature insisted, both in general and in particular, that the courts should regard the constitution primarily as an instrument of government, and that, in their necessary preoccupation with minutiæ, the courts should not make government impossible or unnecessarily difficult, only because new powers were being exercised in unprecedented ways. This literature of protest is not only represented adequately in this collection; in the judgment of the reviewer, it sets the tone of the whole work, and succeeds in making it not only a record of a generation of constitutional law, but a preliminary general blue-print for a constitutional law of the future.

It is the misfortune of constitutional law in the United States that it is studied almost exclusively in judicial decisions. In no other country are the rôles of legislatures and executives portrayed in "constitutional law" solely through these blinkers; and American constitutional historians do not treat the "law" of the constitution as being found exclusively in the cases. Yet American political scientists and lawyers alike contemplate the constitution, "coördinate" departments of government, and nation and states, as if judges alone were entitled to be concerned with them. The shifting balance of effective constitutional powers is left by the constitutional lawyer to the constitutional historian. This is a large error, but a custom in the trade, and it therefore cannot be counted particularly against these selected essays, which present a good and true likeness of American constitutional law in this respect as in others. Could it have been in a spirit of mischief, for example, that the editors neglected to print the constitution? Or that they paid no special attention to the amendment of it?

There is food for reflection in the fact that this generation of constitutional lawyers supplies the need for scholarly synthesis with a coöperatively constructed encyclopaedia, not with a single work of commanding authority like Story's. It is hard to resist the surmise that the case law had so fed upon itself that a constitutional philosophy was possible only in dissent. The new Supreme Court, now in full flight from the cases to the constitution, may again make a systematic constitutional philosophy possible. If so, this remarkable collection will have helped to prepare the way, and it would not be surprising if the new philosopher is represented in its pages.

It seems to this reviewer that it is the faithful portrayal of the state of constitutional law during the period, with its excellences and its crucial failures, which makes this collection indispensable. Most constitutional lawyers will use it, from convenience or necessity, and all will wish to possess it. Even those with full files of law reviews will find it worth while to have these little classics together in ordered array. For teachers in colleges without law libraries, the collection is an answer to prayer. Professor Maggs and his colleagues deserve the gratitude of all workers in the field. Political scientists especially will acknowledge their debt to a work which recognizes their contributions so handsomely.

LLEWELLYN PFANKUCHEN.

University of Wisconsin.

When Civil Law Fails. BY ROBERT S. RANKIN. (Durham, N. C.: Duke University Press. 1939. Pp. vii, 224. $3.00.)

The use of force in a democratic state raises a number of important and perplexing questions in a day in which the philosophy of force is at high tide and the limitations and self-discipline required by a government of law become extremely irksome to many. When, if ever, is martial law justifiable in a democracy? To what extent should it be employed, if its exercise under certain conditions is admitted? And what measures should be adopted to safeguard its use, if and when it is employed? These are some of the questions considered in a book in which Professor Rankin examines the subject of martial law and its legal basis in the United States as defined and outlined by both federal and state courts.

His conclusions may be indicated as follows: (1) Martial law is an emergency law and can be used when necessary upon proper executive judgment of its necessity, subject to disallowance by the courts. (2) There are under the general term of martial law several distinct forms. Martial law in time of war may extend over (a) enemies and/or (b) citizens. Martial law in time of peace may be either (a) punitive or (b) preventive—punitive in time of insurrection or rebellion when the courts are not functioning in the proper manner, and preventive when it is denied that the troops restore order during industrial strife and minor disturbances. (3) Martial law is a constitutional measure. It may be used as an incident to the war power; it may be used as a means of the executive to see that the laws are faithfully executed; or it may be used as an emergency measure resulting from the exercise of inherent power recognized by the constitution. (4) The President, by virtue of the power delegated to him by Congress, has power to declare martial law and to carry it into effect. In the different states, the governors exercise this power. (5) Punitive martial law suspends the writ of habeas corpus.Martial law and the suspension of the privileges of the writ are not the same thing. Martial law is by far the broader term. The writ of habeas corpus may be suspended when there is no martial law, but martial law necessarily includes the suspension of the writ. (6) Certain restrictions are placed upon the use of martial law. It cannot be used in time of war outside the war zone. In time of peace, it can be used only when the civil courts are not functioning in a proper manner. The person who institutes martial law is always liable to impeachment, and his actions, if arbitrary, are subject to disallowance by the civil courts. (7) Martial law is not suspensory in nature but restorative. It does not supplant the constitution, but it is the means employed to restore it to full operation. Further, martial law is not a suspension of the constitution, but its possibility is contemplated by the constitution, its validity is tested by the constitution, and the authority to establish it in proper cases is bestowed by the constitution.

Many other phases of the development of martial law in the United States are considered in eleven chapters which include such subjects as "Martial Law under General Jackson"; "Martial Law in Rhode Island in 1842"; "Martial Law and the Writ of Habeas Corpus"; "The *Ex parte* Milligan Decision"; "The Rise of Qualified Martial Law"; "The Use of Punitive Martial Law in West Virginia"; "A Return to Qualified Martial Law"; "The Influence of the World War upon the Use of Martial Law"; "The Position of State Officers who Declare and Execute Martial Law"; "The Contemporary Use of Martial Law"; and "Opinions and Conclusion Concerning the Use of Martial Law in the United States." The net result is a clear picture of the legal problems involved in the use of martial law and military force within the United States, beginning with the battle of New Orleans, when martial law was used during a time of invasion, and continuing down to the present day, when martial law has been employed to regulate the production of oil in Texas, to close a steel mill in Pennsylvania, to remove a highway board in South Carolina, and to close a race track in Rhode Island. This recent tendency to employ martial law during economic emergencies and in settling economic disputes, the author believes of the utmost importance. As the industrial struggle intensifies, he believes that many state governments will be called upon again and again to use martial law. Great vigilance will be necessary, he asserts, if proper results are to be obtained. A select bibliography and an index are appended to this useful study.

F. R. AUMANN.

Ohio State University.

Fighting for Peace. BY EARL BROWDER. (New York: International Publishers. 1939. Pp. 256. $1.00.)

Mr. Earl Browder's title, *Fighting for Peace,* must be read with strident emphasis upon the word "fighting." What he fights against is clearly indicated by the identity of the gentlemen he attacks, *viz.*, Neville Chamberlain—"the old fox"; Premier Daladier, Trotsky, Herbert Hoover, John N. Garner, Martin Dies, Hamilton Fish, Louis Ludlow, Norman Thomas, Father Coughlin, William Green, Homer Martin, General Moseley, O. G. Villard, Bruce Bliven, Charles A. Beard, Bertrand Wolfe, Max Eastman, Frederick Libby, and Eugene Lyons. Most vociferously of all, he maledicts the Mikado, Mussolini, and Hitler. The coterie surrounding the *Führer* are referred to as "fascist brigands," "gang of hardened cutthroats," and "miserable typhus lice." It is significant that the names of those whom Mr. Browder approves, in part at least, are much fewer in number. Among them are President Roosevelt, Secretary Hull, Attorney-General Murphy, Justice Frankfurter, John L. Lewis, Harry Bridges, Léon Blum, Winston Churchill, Cardenas, and Litvinov—alas, poor Litvinov! Not that the General Secretary of the Communist party of the United States is incapable of panegyric. Referring to Stalin he writes: "We declare before the whole world, with the deepest pride, that we have been brought to admire, to love, to respect, and to learn from the greatest leader of democracy that mankind has ever produced," etc., etc., *ad nauseam.*

Apart from this surplusage of strong personalities, the collected articles, speeches, and reports, published from February 2, 1938, to February 27, 1939, which make up Mr. Browder's book, present a plea for joint action by the democracies, including the United States, and particularly with the full coöperation of the U. S. S. R., against fascist aggression. Soviet Russia is portrayed throughout as "the firm supporter of all peoples seeking democracy and peace." Mr. Browder scorns the assumption that Stalin "may try to beat Chamberlain at his own game by joining hands with Hitler." It fell to the fate of the present reviewer to read these brave words on August 22, 1939. On that momentous day the marriage, morganatic let us hope, of the *Führer* with the Russian dictator was announced, thus knocking nine-tenths of Mr. Browder's book into a cocked hat.

ROBERT C. BROOKS.

Swarthmore College.

History of the London County Council, 1889–1939. BY SIR GWILYM GIBBON AND REGINALD BELL (London: Macmillan and Company. 1939. Pp. xxi, 696. $7.00.)

The authors of this substantial volume reach the conclusion that the London County Council "has become the most profound and powerful single influence in the social life of London." While its functions are not so extensive as those of the county boroughs in England, or the municipal governments of other metropolitan communities, the scope of its operations seems to make it the most important local government authority in the United Kingdom, and one of the most important in the world. A history of its structure, methods, and services during the fifty years of its existence is therefore of value to all interested in the problems of urban government. While authorized by the Council, the present volume is not an official history. As an official of the Ministry of Health, one of the authors, Sir Gwilym Gibbon, was for many years a close observer of the Council's operations from a position such that he was competent to judge the results free from any bias of partisan attitude.

Part I sketches, in three chapters, the history of London government before 1889. The first describes the medley of local government before 1856; the second deals with the period of the Metropolitan Board of Works, from 1856 to 1889; and the third, with the movement leading to the establishment of the Council.

The second part discusses the organization and procedure of the Council, the party system and its influence on policies, financial powers and transactions, and problems of personnel, supplies, and the works department. A body of at first 137 and now 144 members, meeting weekly for six months each year (with recesses of about a month at Christmas, Easter, and Whitsun, and a three months' vacation from August 1 through October), the Council follows a procedure at general meetings which resembles that in Parliament. Much more use, however, is made of committees. From eighteen at first, increasing to a maximum of twenty-seven, and now reduced to twenty, the committees have been granted a good deal of delegated authority. Attendance at council, committee, and subcommittee meetings makes heavy demands on the time of the members. In 1932, there were 9,321 such meetings, with a total attendance of 65,877. A committee chairman may give from half to three-quarters of a normal day's work while the Council is in session; and the ordinary member may give the equivalent of two to three days a week during sessions.

From the beginning, elections and general policies have been based on local parties, somewhat related to but not always identical with the national parties. Most of the time, the party control in the Council and in Parliament have not been in sympathy with each other. Established by a Conservative government, the Council from 1889 to 1907 was controlled by a Progressive majority, while the national government was Conservative, except from 1892 to 1895. A year after the Liberals came to power in 1906, control of the Council passed to the more conservative Municipal Reform party, which retained its control until 1934. From 1922 to 1929, Conservatives controlled the national government, except for the nine months of the Labor government of 1924. From 1929 to 1931, a Labor government supported by Liberals was in office, followed by a "National" government, mainly Conservative. Meanwhile the local Progressive party declined; and the Labor party gained in numbers, and in 1934 secured majority control in the Council.

In the first period, the Progressive Council pressed for larger powers, especially in the field of public utilities, but made little headway. Yet the Conservative government, in 1902, doubled the work of the Council by transferring to it the powers of the School Board. In 1929, another Conservative government added the control of poor relief and hospitals to a municipal reform council, which in a few years was captured by the Labor party.

The increasing magnitude of the Council's work is indicated by the increase of staff and the scale of financial transactions. In both cases, the figures for 1938–39 are approximately twenty times those for 1890–91, although the population of the county has increased only about five per cent, and in recent years has been decreasing. A list of chief officers of the departments includes about half a dozen for each of the important positions, and in most departments one who has served for from fifteen to twenty years.

In Part III, the various executive and regulative services of the Council are set forth. The public works and other functions taken over from the Metropolitan Board of Works have been continued and extended. But of much more importance have been the services added later, in the fields of education, public health, hospitals and medical services, housing, and public assistance. In all of these lines, local public administration has been developed enormously, and has become more highly centralized. Police and public utilities, however, are managed by other special agencies.

Part IV deals with the Council's external relations—to Parliament and government departments, to other local authorities, to public utility undertakings, and to the general public.

In the judgment of the authors of this history, the London County Council is to be accorded "one of the highest places in the modern history of local government." While mistakes have been made, the personal integrity of the members and the high level of service are recognized. At the same time, the existence of problems yet to be solved is noted, especially for the larger regional urban area which now extends well beyond the limits of the county of London.

JOHN A. FAIRLIE.

University of Illinois.

Contemporary World Politics. EDITED BY FRANCIS JAMES BROWN, CHARLES HODGES, AND JOSEPH SLABEY ROUCEK. (New York: John Wiley and Son, Inc. 1939. Pp. xiv, 718. $4.00.)

The editors of this volume have endeavored to present the problem of international politics "in its entirety and in all its complexity." Within the limitations of space available, they have gone far toward achieving their objective, and have provided an introduction to world politics that should be valuable to laymen as well as to students of the problem. The volume consists of thirty-five chapters contributed by as many different individuals, and these chapters are grouped into six parts, for each of which the editors have provided an introduction and a summary. These introductions and summaries furnish a central theme to the work as a whole. This central theme is expressive of the views: (a) that behind the present international confusion lie problems that are economic, governmental, ideological, racial, and psychological; (b) that out of these factors arise inevitable conflicts; (c) that conflict is a form of social process, and can never be abolished; (d) that this conflict, however, need not take the form of "organized murder and destruction"; (e) that the task of promoting "world order and peace" is to make it clear that in the international, as in the domestic scene, "the good of all is the good of each"; (f) that the democracies have lacked a fighting faith and too often have been "starry-eyed or on the defensive"; and (g) that a consistent policy of neutrality and sanctions on the part of the United States would be "a significant step in the direction of world peace."

Within this framework, the essays cover a wide range of subjects and ideas, beginning with the question of the present-day relevance of war, and concluding with the problem of educating our citizens for their responsibilities in world affairs. Along the route are discussed nationalism, imperialism, the foreign policies of the major powers, "regional interests," institutions of international organization, propaganda, moral disarmament, and the relation of various ideologies and religions to war and peace. Since the chapters range in length from eleven to twenty-six pages, none of them is able to get far below the surface of their subjects, though in a number of cases they contain excellent analyses of the factors involved. "Power politics" is accepted as the basic element in international relations today, and in the struggle for power all human activities are found to be increasingly absorbed. The United States, it is felt, cannot escape the repercussions of world-shaking events, and, in particular, it must face the implication of a threatened, and possibly declining, British Empire. The decline in the prestige of international law only adds to our heavy responsibilities in the midst of a lawless world.

Though the general tone of most of the contributions suggests a policy of coöperation for the United States, Professor Edwin Borchard delivers a broadside, particularly against those advocating "collective coercion" against aggressors; although he also reserves a few shots for the "insulationists" of the Nye school.

Appropriate emphasis is placed on the "irrational factors" governing our behavior, and propaganda is regarded as so inseparable from power politics that the tensions created can probably be released only by war. Fascism and communism, as well as democracy, are given a hearing, and the Catholic and Protestant "views" of war and peace are sympathetically explained. An important feature of the book is a series of "fact pictures" illuminating graphically and usefully many aspects of the scene.

G. BERNARD NOBLE.

Reed College.

World Economy in Transition. BY EUGENE STALEY. (New York: Council on Foreign Relations. 1939. Pp. xii, 340. $3.00.)

This important study was prepared by Professor Staley under the auspices of the American Coördinating Committee for International Studies for submission to the Twelfth Session of the International Studies Conference scheduled to meet at Bergen, Norway, August 27–September 2, 1939. The sub-titles of the book—Technology vs. Politics, *Laissez-Faire* vs. Planning, and Power vs. Welfare—indicate something of its scope, but Professor Staley discusses also the challenge of totalitarian war and economics; the as yet unrealized stresses which will have to be eased when transition from a power economy to a welfare economy eventually comes, and, "starting from where we are," the possibilities of coöperation between totalitarian politico-economic systems and the partially *laissez-faire* systems in international trade, international monetary problems, and with reference to labor standards, production controls, migrations of men, and transfers of territory.

The volume is a thoughtful and brilliant contribution to the literature of international economic relations. It is lucidly written, well organized, and scholarly in the best sense of the word. In his consideration of a number of current problems, the author breaks new ground; in his treatment of more familiar problems, his approach is fresh with interest.

Professor Staley's position in this volume may be sketched as follows. In the conflict between technology and politics, technology must triumph. The actual distribution of raw materials and economic resources and the principles of social economy both require "a system of world-wide economic exchange rather than a collection of more or less closed economies." This is just as true for socialist and totalitarian régimes as for capitalist régimes. Transition costs and problems arising from increased international trade and industrialization of undeveloped areas are not insoluble problems; and the alternative of a return to local nationalism would cost at least as much in social upsets and political friction. The tendency of technology to expand the volume of international economic relations offers a better prospect for stable peace than the contraction which would result from further politico-economic nationalism. As for the immediate future, both internally and on the international plane, "*laissez-faire*" and "planning" must be so integrated as to work side by side. The key is this: "Make *laissez-faire* competitive rather than monopolistic, and make planning positive rather than restrictive."

This cursory summary does scant justice to Professor Staley's theses. Students of economics and politics will find his book worthy of careful study.

HERBERT W. BRIGGS.

Cornell University.

The War Behind the War, 1914–1918. BY FRANK P. CHAMBERS. (New York: Harcourt, Brace and Company. 1939. Pp. xv, 620. $3.75.)

So far as the reviewer knows, this book is unique in the sense that no other has ever attempted to do what it does. It pretends to be only a general political and social history of the World War, although not completely divorced from military events. The author apologizes for having undertaken such an ambitious task, but at the same time warns the reader that his treatment of the subject is intended to be general and not based on any claim "to meticulous authority in any field." He also intimates that "the exacting standards of modern scholarship" have not been "allowed to scare off attempts to see the bigger episodes of history as a whole."

Despite these prefatory forebodings, Mr. Chambers has given the reader a pretty satisfactory story of an otherwise widely scattered subject. Within the comparatively brief compass of 535 pages, he writes of the World War in terms of the political, social, and economic events on the civilian fronts in all belligerent nations except the British dominions. The story of war finance is purposely omitted. Although the author keeps the reader sufficiently informed throughout of happenings on the battle line, he never loses sight of his main job, which is to narrate all the important developments upon the "home" front in every country. He shows the inefficiencies of governments, the shortage of shells, rifles, guns, and other equipment, the quarrels between politicians and supreme commands, and the lack of correlation between political and military leaders, especially in the allied nations. The book affords clear, if not always authoritative, evidence that the home front promoted and retarded progress on the battle front, and that sea power and land power in modern wars depend in the last analysis on the moral and economic front—the entire civilian population.

The book is divided into three parts: Part I on the first third of the World War; Part II on the intermediate period, including the Russian Revolution and the entrance of the United States; and Part III on the last year of war in the West. Developments in every belligerent nation in each period are told in separate chapters. The 235 footnote references printed at the end of the book are mostly notes and not references to authorities, the latter function being performed by the bibliography, which is arranged under the names of the belligerent nations and under the chapters in which those nations are discussed. This sort of documentation hardly conforms to well-recognized academic folk-ways, and exposes the author to serious criticism. There are also appendices of British and French war-time ministries and indexes of persons and subjects.

JACOB VAN DER ZEE.

State University of Iowa.

Propaganda for War: The Campaign Against American Neutrality, 1914–1917. BY H. C. PETERSON. (Norman: University of Oklahoma Press. 1939. Pp. 357. $3.00.)

The publication of Professor Peterson's book comes with great timeliness. Events appear to be shaping for a second drive on American opinion, and in the current war abroad Americans can expect a campaign by the British which may once again follow the pattern so carefully and competently revealed by the author of the volume here reviewed.

Professor Peterson's book is a revelation of the astutely managed effort conducted by Wellington House and other agencies to enlist our sympathies and economic strength, and finally our military and naval forces, on the side of the Allies. His most important, and certainly his most illuminating, contribution is the excerpting of significant materials embodied in the *American Press Résumés,* which he discovered in the British Museum. The résumés were printed reports from Wellington House distributed to the war-time cabinet as confidential summaries of the working of British propaganda in America. They serve to enlarge the place occupied by Sir Gilbert Parker in the propaganda machine. He sat like a spider at the center of the web and coolly calculated the catch, month by month, year by year.

The British war-time manipulation of our emotions and opinions has so impressed Professor Peterson that he comes to the conclusion that the propaganda directed from London brought us into the war. The British propaganda campaign was unquestionably a factor. Yet who can say, without further investigation, that it was the primary cause of our belligerency? No scholar has perfected techniques which have justly weighed the various forces that worked toward our entrance into the war, and Professor Peterson's array of facts does not justify his concluding assertion.

The study is marred by an over-simplification of the function and power of the press, leading Professor Peterson into unjustifiable and unscholarly generalizations and inconsistencies concerning news policy and the general conduct of newspapers during the neutrality and war period. Reliance upon Dr. Ralph O. Nafziger's informed doctoral dissertation, "Public Opinion and the American Press During the World War, 1914–April, 1917," or Dr. Schuyler Foster's quantitative analyses of news content, would have saved the author from many pitfalls, or induced him to generalize more cautiously. Evidently, Professor Peterson made no really painstaking examination of leading papers in various parts of the country.

An example of observations which are open to criticism is the comment: "During the first twenty months of the war, American newspapers displayed attributes which made them suspect among educated people. They were uniformly sensational, and aggravated every crisis which arose." This is an unsupported generalization. And many "educated people," among them preachers, politicians, and college professors, were far from exercising the kind of disinterested objectivity which the author likes to think separated the "educated" sheep from the journalistic goats.

RALPH D. CASEY.

University of Minnesota.

National Socialism and the Roman Catholic Church. By Nathaniel Micklem. (New York: Oxford University Press. 1939. Pp. xvi, 243. $3.00.)

This significant book, written by the principal of Mansfield College, Oxford, and published under the auspices of the Royal Institute of International Affairs, tells the story of the conflict between the National Socialist government and the Roman Catholic Church. Beginning with a penetrating study of Hitler's outlook and policy and the "gospel according to Alfred Rosenberg," Dr. Micklem devotes his first seven chapters (about one-third of the book) to a very careful exposition of the Nazi ideology as it is related particularly to the religious sphere. "The church struggle," writes Dr. Micklem, "has been a conflict of ideas. Its universal interest lies largely in the philosophical and theological problems which it raises." The development of the record "of the tragic and inevitable conflict between two philosophies that are finally irreconcilable" is clearly and thoroughly done, and the historical survey of the church conflict year by year from 1933 through 1938 is a splendid example of genuine scholarship.

The author has been very careful to present Nazi views accurately and fully. His researches have been so thorough and extensive that he is able to illuminate his record with an astonishing number of astonishing quotations. Out of the mouths of its own leaders, the "positive Christianity" of Nazidom is revealed as a "pure Immanentism; it recognizes no God outside, or other than, its own inner demands and wishes." The claim of the church to speak to the nation in the name of the transcendent God whose law is eternal, above all nations, and part of the structure of the universe, is rebutted by the Nazis, who repudiate the transcendent in religion. "This is one of the many points of agreement," the author points out, "between the National Socialist régime and the Soviet government. To both, prophetic religion is intolerable; there must be no contrary voice from heaven or on earth."

Among other subjects, the book discusses the Concordat in all of its aspects, the currency and immorality trials, and the development of the party into "a political church." It explains how the Nazi régime "is a negation of God erected into a system of government," and how Nazis feel that "Christ was great, but Adolf Hitler is greater."

The author has made a conspicuous contribution to the understanding of the mighty struggle now going on in Germany for the perpetuation of the Christian religion. His book deserves the close attention of scholars and careful reading by large numbers of people whose interests are more general.

James K. Pollock.

University of Michigan.

Poland: Key to Europe. By Raymond Leslie Buell. (New York: Alfred A. Knopf. 1939. Pp. xi, 364. $3.00.)

The Politics of the Balkans. By Joseph S. Roucek. (New York: McGraw-Hill Book Company, Inc. 1939. Pp. ix, 168. $1.50.)

South-Eastern Europe: A Political and Economic Survey. Prepared by the Information Department of the Royal Institute of International Affairs in collaboration with the London and Cambridge Economic Service. (London: Oxford University Press. 1939. Pp. xvi, 203. $2.00.)

It would be difficult to select three books which would provide more information on, and furnish a better basis for evaluating, the politics of Europe from the Baltic to the Aegean than those here under review. All the countries are faced with much the same agrarian issues;[1] each has a minority problem either within or without its borders; all, although some more than others, are faced with the task of uniting differing inherited cultural, legal, and economic systems. All are dictatorships with a façade of democratic institutions, distinguished from the totalitarian régimes by the lack of any peculiar ideology. All are jealous of their independence, but circumstances beyond their control have usually placed them within the orbit of some great power. That Germany has lately increased its economic influence, particularly in the Balkans, is, of course, because Germany is the one country which is willing to take the agricultural products which this region must export. The German barter arrangements are not liked, but they have on the whole been materially advantageous and fair to the Balkan states and no other country offers a better bargain. This is brought out most clearly in the excellent concluding chapter of *South-Eastern Europe.*

Buell has no difficulty in at once making clear the significance of Poland in relation to the peace of Europe, past and present. Permitting himself an historical "if," which pays small compliment to the force of German nationalism in the nineteenth century or to the great Chancellor's diplomatic ingenuity, he holds: "Had a strong Poland existed in 1860–70, Bismarck would have hesitated a long time before embarking on wars with Austria and France. The partitions of Poland paved the way for the rise of the German Empire of the nineteenth century; so long as Poland manages to exist, the rise of a new Nazi Empire in twentieth-century Europe may be obstructed." The brief historical account of Poland's era of grandeur is important, for "Poland today is dominated by the dream of its greatness during the Middle Ages—a great culture and a vast domain which under one ruler sheltered a large number of nationalities." In view of the detail presented in regard to the three partitions of Poland, the re-arrangement of these divisions at the Congress of Vienna might have been explained as well. The steps in the reconstruction of Poland during and after the Great War are presented carefully, and attest to the perseverance of Pilsudski. He simply went ahead in spite of "the opposition of the Peace Conference, the United States, and Soviet Russia," and after bitter armed conflict amassed a Poland with a population of about twenty-six million, of which one-third were non-Poles. Since then, the population has increased by about eight million. Neither agricultural nor industrial production has been able to increase at a corresponding rate, which results in a very low per capita income. Buell attacks with thoroughness the economic situation in Poland, and he has set down many details about Poland's resources, financial policies, and recovery programs. It would, nevertheless, be of interest to know more about the "relatively advanced system of social legislation" which is mentioned several times but is never explained. In lieu of private capital for investment, the state has launched a large program of state capitalism. "As a result of the low level of national income, as well as the comparatively large sums spent for military purposes, Poland must neglect public education, and even public works."

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[1] **This review, like the volumes with which it deals, was written before the outbreak of the present European war. *Man. Ed.***

There are good sections dealing with each of the major minorities—the Germans, the Ukrainians, and the Jews. Poland's record here is none too good, and Buell does not hesitate to say so. Antisemitism is very real, although it is not a matter of law, nor is it on a racial basis. Buell is critical of Poland's desertion of the principle of Slavic unity, strikingly manifested in its mistreatment of the Slavic minorities and the incessant quarrels with Czechoslovakia culminating in the seizure of Teschen. An interesting sidelight on the recent Russian-German pact are the aims of the anti-Russian party which advocates creation of an independent Ukraine and Georgia bound to Poland at Russia's expense, and " . . . even envisages the 'liberation' of Siberia from the 'yoke' of Russian oppression. Should Russia become involved in war with Japan, it is not impossible that the Polish government would endeavor to put some of these ideas into effect." In summary, the author may be commended for his successful endeavor " . . . to survey and analyze the problems of modern Poland in a sympathetic but scientific spirit."

Roucek's excellent volume, which appears in the series of "Studies in Political Science" edited by Professor F. M. Marx, is particularly distinguished for the wise selection of material which he has woven together in very readable fashion. He creates a unity where, as he points out, in reality no unity exists. Accounts of the kaleidoscopic changes of ministers cannot always be exactly engaging, but these, after all, are a necessary part of the Balkan political scene. Three chapters are concerned with the Balkans as a whole, and are followed by separate chapters dealing with Rumania, Yugoslavia, Albania, Greece, Bulgaria, and the Macedonians. These contain a description of the geography and peoples, a brief historical sketch, descriptions of the forms of government, the political parties—past and present, and discussions of the chief economic and political problems. Throughout, a careful distinction is made between theory and practice, and the realism of Balkan politics stands forth in clear outline. "Personal régimes devoid of ideological content, the contemporary Balkan governments are wide open to totalitarian penetration from Italy and Germany. A new era is writing its laws for the Balkans and Europe."

South-Eastern Europe covers the same Balkan states, and in addition Hungary and Turkey. A section on foreign policy traces the maze of treaties affecting this region in 1919–39; and there are separate sections dealing with (a) internal politics and (b) economics, trade, and finance of each of the countries. There are numerous maps, graphs, and tables relative to population, imports, exports, etc., and the volume is exactly what it was intended to be, a convenient and informative reference book.

E. C. HELMREICH.

Bowdoin College.

The Corporate State in Action. BY CARL T. SCHMIDT. (New York: Oxford University Press. 1939. Pp. 173. $2.25.)

This book, small in bulk, is of the highest value. Of the two titles that it bears, the sub-title is by far the more informing as to content; for the corporative institutions rightfully receive no great share of the author's attention. They can hardly be said to constitute anything "in action." Instead, a clear picture is presented of the Italy which is definitely *under* Fascism.

Approximately one-half of the space is devoted to a repetition of the familiar story of Italy before and during the black-shirts' acquisition of power and their construction of a "police state." The treatment is clear, cool, succinct, and highly judicious. We have, in this reviewer's judgment, the verdict of history, on the relative significance of the several elements that compose that stirring drama—the failure of the political class in post-war Italy, the class appetites and despairs of that distressful era, the consequent decay of public spirit and legality, the opportunism of Mussolini as to platform planks, combat tactics, and strategy in the seizure of and entrenchment in power.

The really distinctive value of this book, however, is in the remaining four chapters, wherein the author shows himself a real political economist, if that ancient category name may be revived. The material is mainly economic, but its nature and political effects are politically judged, with considerable statistical detail and admirable nicety of judgment. Two of the chapters, as we should expect from the author's previous writing, deal with labor, in the factory and especially in the agricultural field. The statemanship of the "battle for grain" is condemned severely, as producing (for the sake of a political slogan) an economic unbalance that renders the Italian community even more vulnerable than before. The chapter on "Property and Profits" proves to the hilt the hollowness of the nationalistic cult, under whose cover an extremely small economic oligarchy is provided at national expense with opportunity to exploit. This is in direct contrariety to the early promises of the Fascists, and also the later propaganda put forth in the name of a "corporativism" that was to have meant an ideal of wholeness and sanity, rather than a concentration of the nation's economics in business executive hands that can be controlled by a dictator in Rome.

The final chapter, "The Power of the Sword," shows how even the economic oligarchy is deceived. State management has encroached upon business enterprise; the party bureaucracy is given the whip hand over production. Taxation-control, capital-lending control, "corporation" (state) control—all tend to concentrate economic and political power alike in a unity that has become impossible in its demands upon frail human beings. Worse yet, the man who is required to be omniscient at home is tempted into foreign imperialism as an escape. If he can only wave the flag and brandish the sword, economic oppression may be overlooked and economic failure forgiven. There is imperialist conquest in Ethiopia, imperalist intervention in distracted Spain. But a Europe at war! That is another story, rather a predicament than an opportunity.

Henry R. Spencer.

Ohio State University.

Les Étapes de l'Économie fasciste italienne du Corporatisme à l'Économie de Guerre. By Louis R. Franck (Paris: Librairie Sociale et Économique. 1939. Pp. 282. Fr. 30.)

Dr. Franck is well known to students of Fascist corporatism as the author of *L'Économie corporative fasciste en doctrine et en fait*, published in 1934. In that searching volume, he exposed once and for all the character of Fascist economic organization as a vast police mechanism embracing the lives of a nation of forty-five millions. After that analysis of corporate *structure*, Dr. Franck has now given us an equally significant work showing this time the net *effects* of Italian economy under the operation of corporate ideas and institutions. The transition "from the illusions of corporatism to the realities of a war economy" (p. 27) mark, in the author's opinion, Italian economic evolution in the last five years. In particular, Dr. Franck investigates the control of credit, savings, the expansion of public expenditures and the accompanying growth of deficits due to the war ventures in Ethiopia and Spain, the movements in consumption, prices and real wages, and objectives and achievements of autarchy as the appropriate form of a permanent war economy.

Dr. Franck is concerned primarily with the net effects of Fascist intervention in all these issues of public policy. Italy under Fascism has embarked upon some types of economic intervention, such as control of credit and banking, the construction of public works, etc., that are not peculiar to her, but typical of all countries during the last decade. But in addition Fascism has also imposed upon Italy a permanent war economy that has had more serious results. On the one hand, the country was forced to cut down its consumption of many vital necessities in order to defray the costs of actual and potential wars. The capital levies in the years 1935–38 alone yielded about twenty-five billion lire and constitute forced decreases of consumption for the benefit of wars in Africa and Europe. Dr. Franck paints a vivid picture of the consumption of the various foods in these recent years. "Consumption is well directed, e.g., against meat, vegetables and fresh fruit, and for fish and cheese" (p. 151). He shows in detail how the quality foods are becoming increasingly less available for the mass of Italians.

Italy, of course, has always been a poor country, where the per capita consumption of better foodstuffs, such as meat, butter, eggs, milk, etc., was low, but it is essential to remember that under Fascism this poverty has become worse—for the glory of the Roman legions in Ethiopia, Spain, and Albania. Dr. Franck rightly emphasizes the contribution of autarchy to this decline in Italy's economic position. In effect, it has imposed upon the Italian people the necessity of buying inferior goods at higher prices, because the individual citizen no longer has the free choice of buying the best goods at the lowest cost. Political orders from above replace economic choice from below—this is the essence of autarchy, which can be justified to the people only in terms of necessities of war and imperial expansion.

WILLIAM EBENSTEIN.

University of Wisconsin.

Contrôle législatif de l'Extrémisme politique dans les Démocraties européenes BY KARL LOEWENSTEIN. (Paris: Librarie Générale de Droit et de Jurisprudence. 1939. Pp. 136.)

How can a democracy safeguard itself against the rival ideologies of the Right and Left which threaten to destroy it? In the present book, Professor Karl Loewenstein, of Amherst College, gives one aspect of the answer to this pressing question. His approach to the problem is through an examination of the legislative restrictions which European democracies have imposed upon "subversive activities," particularly in the period since the fall of the Weimar Republic. The study was published originally in the *Columbia Law Review* (Vol. 38, pp. 591ff. and 725ff.). The present French translation contains some additional paragraphs dealing with events since the Munich Conference. Mention should be made also of Loewenstein's article, "Militant Democracy and Fundamental Rights," published in this REVIEW (Vol. 31, pp. 417 ff. and 638 ff.).

At the outset, the author defines "subversive activities" as "actes patents ou occultes commis par des personnes qui propagent ou pratiquent des doctrines qui ont pour objet de renverser l'ordre politique existant, étant sous-entendu et admis que, pour atteindre ce but, on peut recourir à la violence." Legislative control has assumed many different forms, such as the suppression of subversive parties and associations, "shirt-laws," prohibitions of military formations and activities by unauthorized groups, restraints upon the excesses of political propaganda, curtailment of freedom of assembly and of the press, legislation against disloyalty of public officials, and the institution of a political police.

Loewenstein in the main defends these restrictions. Only militant democracies can survive the assaults directed against them. Fire must be fought with fire, even though so-called fundamental rights are thereby circumscribed. With the fate of the German Republic ever before his eyes, the author insists that subversive movements should not be allowed to undermine and destroy democracy through high powered emotionalism operating under the guise of ostensibly democratic techniques. Although the monograph was completed before the outbreak of war in Europe, the types of legislative control described in it are being extended rapidly under pressure of hostilities. Even though the United States remains neutral, it is likely that further restrictive laws will be demanded in this country.

Loewenstein has performed a very useful service by his careful and scholarly survey. While the reviewer is unable to go as far as the author in his championship of militant democracy, he does agree that a searching revaluation of traditional civil liberties is necessary. On the other hand, it is not enough merely to "sit on the lid." The major defense of democracy must be a reduction of the stresses and strains in the body politic through adequate economic and social reform.

ROGER H. WELLS.

Bryn Mawr College.

An African Survey. BY LORD HAILEY. (London and New York: Oxford University Press. 1938. Pp. xxviii, 1837. $7.00.)

Ten years ago, when General Smuts was invited to deliver the annual Rhodes memorial lectures at Oxford, he devoted a portion of one address to the need for a comprehensive survey of African progress—one which should compare and evaluate the various, and at times conflicting, colonial policies which are being administered throughout that continent. Stimulated by this suggestion, and aided by a substantial grant from the Carnegie Corporation, the Royal Institute of International Affairs brought together a distinguished committee under the direction of Lord Hailey and including Lord Lothian, Lord Lugard, Julian Huxley, Sir Arthur Salter, and half a dozen others of equal distinction. This committee planned and executed a prodigious research program which required five years for its completion. The present volume is the chief, although not the only, publication resulting from its labors.

It is difficult to over-praise this report. From every point of view it is an outstanding achievement, and one which truly merits that much abused adjective, "monumental." Here within the compass of a single large volume one may find a wealth of accurate information and informed discussion about almost every phase of life upon the African continent south of the Sahara. The geographic and demographic background, the various systems of government and colonial administration, taxation policies, land and labor problems, agriculture, health, education, and the internal and external aspects of economic life and policy—all these are discussed with an authority and a completeness which will excite the admiration of every student of African affairs. Moreover, as if this were not enough, the final draft has been written with a clarity of style which is refreshing. All in all, there can be no doubt that this volume will remain for many years an indispensable work of reference on all that pertains to present-day Africa.

Although it is manifestly impossible within the limits of a brief review to attempt any comprehensive summary, much less any evaluation, of the conclusions reached by the committee, certain salient points may be singled out for brief mention. The British system of "indirect rule" is given appropriate praise, but this is tempered with a warning that "its real test will come when the traditional native authorities are faced with the necessity of introducing social services on something more than the rudimentary scale to which they are now accustomed. It will be subjected to a further test with the growth of political and national aspirations in Africa." In the opinion of the committee, the troublesome land problem must be met by a progressive recognition of legal, individual, native, land titles. Since, however, premature moves in this direction are demonstrably unwise, the committee recommends an intermediate stage in which some form of legal recognition be given to native "occupancy." This would allow the free exercise of all the rights of ownership without an unlimited power of encumbrance and transfer. The general course of native economic life, the committee believes, should be guided so as to produce a greater differentiation in the economic position of classes and individuals. An artisan and a trading class must be developed, together with a social sense that will permit the erection of a credit and wage system.

Since there is so little coördination of activities and policies among the African colonial powers, the authors of this study conclude by recommending the creation of a central African bureau to provide information on every aspect of activity in Africa and to maintain close contact with official and private institutions in all interested countries. Staffed by specialists in scientific, economic, and social matters, such a bureau would be a clearing-house of knowledge and "a common meeting-ground where personal contact could be established between those who desire to improve their knowledge of African affairs." Although assisted financially from governmental sources, the bureau should be controlled by a non-official body. This seems a statesman-like proposal; and if it should be adopted, the bureau would be a fitting agency to continue the work initiated so admirably by this study.

GRAYSON L. KIRK.

University of Wisconsin.

Karl Marx. BY KARL KORSCH. (New York: John Wiley and Sons. 1938. Pp. 247. $1.75.)

This book is the fifth volume in the series, "Modern Sociologists," edited by Morris Ginsberg, of the University of London, and Alexander Farquharson, of the Institute of Sociology. No one has written a more scholarly study on Marx than Mr. Korsch; the author shows an acquaintance with Marx's writings that few can equal. It is also true that few writers have shown so firm a grasp upon the sources of Marx's ideas. Yet the book hardly achieves its purpose. It aims to serve as a textbook for students in universities, adult education classes, and the intelligent reader. But it does not create an understanding of its subject as do similar books by G. D. H. Cole, A. D. Lindsay, and Sydney Hook.

Mr. Korsch's book is written, as are so many texts, as if the writer were talking to his learned colleagues. The style is frequently cumbersome and involved. The language is often unclear, as in the following sentence: "The *law of value* is the only form of social organization of production which exists today, and is, indeed, the only kind of 'social planning' which conforms to the principles of modern competitive or commodity-producing society" (p. 144). How can a law be a law and at the same time a form of social organization and the only kind of "social planning"? Much more important, however, this book is dogmatic and essentially uncritical. Surely after three generations the intelligent reader is entitled to have the Marxian wheat separated from the Marxian chaff.

Mr. Korsch will not reach the intelligent reader's mind by repeating with apparent approval such Marxian dogmas as that the bourgeois family is based "on capital, on private gain," and that "the present system of bourgeois marriage is in reality a system of wives in common" (pp. 41–42). Nor will he impress the reader by his many exaggerated claims lacking substantiation. We are told, for example, that Marx's "theoretical exposure of 'the fetish character of the commodity and its secret' is not only the kernel of the Marxian *Critique of Political Economy*, but, at the same time, the quintessence of the economic theory of *Capital* and the most explicit and most exact definition of the theoretical and historical standpoint of the whole materialistic science of society" (p. 136). What is 'the fetish character' of the commodity? Reduced, he says, to its simplest form, it "consists in the fact that man's handiwork assumes a peculiar quality which influences in a fundamental way the actual behavior of the persons concerned" (p. 131). It is difficult to see how a statement that tells us so little can be the heart of so much.

Mr. Korsch believes that Marxian theory is a practical guide for the proletariat in its struggle to realize proletarian society. What kind of a guide has Marxian theory been in Germany, Italy, France, Spain, and England? The Marxian theory, making full allowance for the important truths it contains, can offer nothing more than general suggestions to the problem of action. A theory of history, no matter what kind, cannot give practical answers to practical questions. The writings of such men as Croce, Morris R. Cohen, F. H. Bradley, and Charles A. Beard, which point out the limitations of history, have left no mark on Mr. Korsch's mind.

The author hardly ever attempts to test controversial Marxian concepts in the light of history. The bearing of Russian experience, for example, is not considered. Nor is the problem of class analyzed clearly. Nor are we told what a proletarian is. The criticisms that have been made of the labor theory of value and of surplus value are not presented adequately. The chapter on "The Materialistic Conception of History" is more concerned with the higher criticism than with giving the essentials of its subject.

At bottom, the author entertains a view of science that only the doctrinaire Marxian will accept. Mr. Korsch speaks of bourgeois science and proletarian science, failing to make clear that valid scientific principles are valid whatever class may make use of them for whatever purposes. He believes that truth is dependent upon the existing mode of production and the class struggle arising therefrom (p. 83). This is nonsense. The truth of a proposition in physical science has nothing whatever to do with the existing mode of production. The truth of Archimedes' principle of floating bodies is as true today under what is called monopoly capitalism as it was under the simple economy of the Greeks. The principle of marginal utility, developed by the orthodox economists, is as applicable to a socialist as to a capitalist economy. Mr. Korsch's claim that Marxism is a science requires no comment.

If the intelligent reader should by any chance be willing to accept Marxism as a religion as well as a science, it should be said that he will find Mr. Korsch one of its most able theologians and one who possesses a wide and deep knowledge of his subject.

BENJAMIN E. LIPPINCOTT.

University of Minnesota.

The Medieval Contribution to Political Thought. BY ALEXANDER PASSERIN D'ENTRÈVES. (New York: Oxford University Press. 1939. Pp. viii, 148. $3.00.)

A Short History of Political Thinking. BY PAUL W. WARD. (Chapel Hill: University of North Carolina Press. 1939. Pp. 127. $1.50.)

These two slight volumes exemplify two methods of presentation of the history of political thought. Professor d'Entrèves limits his study to Aquinas, Marsilius, and Richard Hooker; Professor Ward touches upon most of the great names from Socrates to Dewey. The former confines himself rigidly to critical exposition of thought; the latter presents bits of institutional background under six chapter-headings, i.e., City-State, Roman Empire, Roman Church, Absolute Monarchy, Democracy, Nation-State. The Oxford scholar is addressing a learned audience; the Syracuse University teacher is writing for beginning students in the American college. Professor d'Entrèves presents a closely-woven argument; Professor Ward at times approaches the colloquial. Finally, they differ in purpose. The former intends "to give evidence of the fact that some fundamental principles and leading ideas, which were given definite form and expression by medieval thinkers, far outstretched in their effects and influence the conventional boundaries which usually limit the medieval period." Professor Ward also believes a study of the past helpful in the search for present solutions; but he is content to provide a manual to accompany lectures and readings in the original sources of classics of political thought.

In the judgment of the reviewer, neither writer has fully achieved his purpose. Professor Ward's volume surrenders too much to the demand for the easy introduction. The style is delightfully informal; though the type is needlessly small for comfortable reading. But this treatment has led the author to scant the elements of the history of thought that for accuracy and finish need to be given a fine edge of exposition. Furthermore, it is perhaps inevitable that in so brief a treatment of so large a subject many topics are introduced but not concluded. Thus, for instance, it is promising to be told (p. 73) that "all pre-scientific political thinking proceeded in an atmosphere of logical condemnation and justification in which such notions [as 'contract' and 'nature'] were peculiarly fertile." But it is somewhat puzzling to find at the end of the book that scientific methodology is particularly characteristic of democracy, which prizes the competency and validity of its procedures" (p. 116). Are we to infer that democracy monopolizes "true" political thought? Yes. "To abandon democracy would be to renounce all the political sagacity acquired by the English since the Long Parliament and by the French since 1789. . . . The devotion of the democracies to modern science and education is at once evidence of their insight, the basis of their morale, and an augury of their future. The initiative in modern culture has passed to them by default" (pp. 116–117). This tendentiousness surely belongs in lecture rather than textbook. Finally, it is a matter for regret that one so skillful in reducing the abstract and complex to the simple has not provided the American undergraduate with a glossary of the many technical terms that remain in the volume.

The criticism I should offer of Professor d'Entrèves is of a different order; it is that he gives us the virtue of his defect. He does not show that the medieval contribution is of current utility; but he does illuminate the nature of that contribution, and in doing so provides keenly stimulating exegesis of Aquinas, Marsilius, and Hooker. He has been superbly successful, moreover, in presenting these great thinkers as embodiments of the temper of their times, yet likewise as beads upon the endless strand of political thought. Each achieved measurable success in weaving into the established doctrines new materials, with the result that the product became a viable system. All this Professor d'Entrèves presents with grace and insight. The happy result—to which the publishers have given fine form—can be summarized in his concluding sentences: "This idea of the dependence of state-power and state-action on higher and indeed eternal values is not so much a legacy of medieval as of Christian political thought. To reject it can only mean to renounce Christianity altogether, and to raise the state or the tribe to the place which the Christian reserves for God alone."

ALLAN F. SAUNDERS.

Scripps College.

Social Research. BY MANUEL CONRAD ELMER. (New York: Prentice-Hall, Inc. 1939. Pp. xviii, 522. $3.00.)

This book is designed primarily for sociologists, and its avowed purpose is to present the problem of social research, calling attention to the use which may be made of specific research methods and the necessary interrelation of different methods in an adequate study of any social research project. It is devoted largely to various types of social surveys, and it considers briefly such techniques as historical research, life histories, the case method, statistics, experimental research, the measurement of attitudes, rating scales, sampling, interviewing, observational methods, and probability. Covering such a wide range of topics, it is impossible for the author to give adequate treatment to all of them. It is assumed that the reader has had an elementary course in statistics, and yet the author does not discuss the limitations and uses of various standard statistical devices. No mention is made of recent advances in the fields of psychophysics and factor analysis. A number of loose references are made to correlational methods, but these techniques are not submitted to any rigorous analysis. The brief section on the study of personality hardly scratches the surface of the subject.

The sections on social planning and on regional planning touch on topics of interest to political scientists, but they fail to use the great wealth of governmental material now available. Mention is made of the presidential straw polls, but very little is done to analyze the methods that may be used to measure their accuracy.

Scattered throughout the book are some generalizations regarding social research which impressed the reviewer as being sound. For example, on page 339 the author says: "Social research methods should be so standardized that, when conclusions of any social investigation are announced, other scientists may carry on similar studies and compare results." The book contains numerous quotations from great social investigators such as the Webbs, and it gives a good historical summary of the advance of sociological methods.

Harold F. Gosnell.

University of Chicago.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

The County Agent (University of Chicago Press, pp. 225, $2.00), by Gladys Baker, is the story of the rise of the county agent from an itinerant teacher of better farming to his present position as local representative and administrator of a vast federal adjustment program. It is a remarkable development interestingly traced in this timely book. The county agent dates from 1903, when Dr. Seaman A. Knapp introduced the demonstration method of teaching improved agriculture. It had its beginning in the South, mainly as a result of the invasion of the boll weevil. The first county agents were practical farmers willing to become circuit riders preaching the gospel of better husbandry. Not until the passage of the Smith-Lever Act in 1914 was agricultural extension work put on a stable financial basis, with prescribed state-federal coöperation, and with a trained personnel. The first three chapters of the book outline the development of the county agent and his work until the beginning of the New Deal. The fourth chapter describes the place which the county agent has occupied in the administration of the recent agricultural adjustment programs. Almost everywhere he has been given responsibility for explaining and interpreting the various acts and the constant stream of administrative rules. He has held educational meetings and elections, conducted sign-up campaigns, recruited and advised allotment committees, and sometimes has been given the job of checking compliance. In many counties, he has been disbursing officer. The county agent is unique as a government official in the United States because he represents at once three levels of government—county, state, and federal—and in many states a private organization as well. The book raises and discusses such questions as the following: (1) Do government agents, under a system of divided control, conform chiefly to local rather than to state or national influences? (2) Can a government agent be controlled partially by private agencies without compromising his public status? (3) Should government agents associated with a national program be subjected to county control? (4) Will an agent with a divided allegiance be likely to serve dominant economic and political groups within his county? (5) Is a county agent trained for scientific agricultural education best fitted to assume administrative functions? The author believes that the county agent in the past has proved himself free of the general charges of inflexibility and unadaptability of government bureaucrats. She says the future test will be as to whether he can keep this adaptability and this local responsibility and yet combine them with a larger and more objective national viewpoint.—PAUL W. WAGER.

In 1937, the Committee on Public Administration of the Social Science Research Council concluded that cities in the United States had enjoyed sufficient experience under the council-manager form of government—which its research director characterizes as "perhaps the most important experiment in government in the United States since the adoption of the Constitution"—to warrant a series of studies. A research staff was recruited to undertake first-hand studies of eighteen "carefully chosen cities," and in addition more than thirty cities were earmarked for survey by professors and graduate students attached to universities. The results of this rather ambitious project are to be presented in a volume of general analysis and in a series of case studies of individual cities. The first three of these, entitled *City Manager Government in Charlotte* (Public Administration Service, pp. iv, 53), *City Manager Government in Janesville* (*ibid.*, pp. iv, 52), and *City Manager Government in San Diego* (*ibid.*, pp. iv, 72), have now appeared under the authorship of Harold A. Stone, Don K. Price, and Kathryn H. Stone. Just why these particular cities were chosen to introduce the series, the reader is not informed—perhaps because they represent the South, the Midwest, and the Pacific states. They certainly are not among the pioneers in the field, nor are they more outstanding examples of the council-manager form than numerous other cities. Janesville adopted the plan in 1923, Charlotte in 1929, and San Diego nominally came under the system in 1932, although it was not until 1935 that any considerable degree of success was realized. No uniform outline of detailed nature is employed in the three studies, which has the disadvantage of making it somewhat difficult to use them for comparative purposes, but perhaps makes for a freshness which would be sacrificed under a more formal arrangement. However, in every case the authors devote generous attention to the city government as it existed before the council-manager form came into effect, and therefore make it possible to achieve perspective in evaluating the accomplishments of the new system. Praise is due for the earnest effort to penetrate façades and get at the real operation of government departments, as well as for the attention which is given to such important indirect forces as pressure groups. Only one of the studies has a table of contents, two have appendices, and none has an index. It would seem that a uniform policy might have been followed in the case of the first, even if indexes could not be provided.—HAROLD ZINK.

Since the University of Chicago Press, in 1925, published the first edition of Professor John M. Clark's *Social Control of Business*—now appearing in a second edition (McGraw-Hill Book Co., pp. xvi, 537, $3.50)—much water has passed over the dam. Fourteen years ago, Professor Clark regarded the problem of depression as a matter of relatively mild cyclical movements; "now it is one of violent revulsions, coupled with the threat of chronic semi-paralysis." Revision of the study has, therefore, been extensive. But the author's basic ideas remain essentially the same. As early as 1917, he was writing on "The Basis of War-time Collectivism." At the time when the first edition of *Social Control* appeared, most students of the subject were content to devote primary attention to the problem of dealing with trusts and of the regulation of utilities by administrative boards and commissions (or *vice versa*). Professor Clark went farther. He was interested in all phases of the legal framework of economic life, of controls formal and informal, and especially of the capacity of powerful minorities at times to tip the scales against the public interest. But even a powerful minority interest could not press its advantage too far without facing adverse political reaction, or worse—the growth of another and possibly more powerful interest. This incessant process of one powerful minority succeeding another, each in its turn being only temporarily in the rôle of the sacred cow, kept us in a rather hopeful evolutionary process—one in which we should never be content, to be sure, but one which might be counted upon to get us through the danger periods without disaster. In the present volume, the author is slightly less optimistic. He is not in favor of abandoning government efforts to restrain unwholesome practices in the field of business and industry. Nor is he opposed to official planning for the public good. A certain amount of this may be necessary. But he is aware of the dangers of control by political hacks. He is less apprehensive about what competent civil servants might do; but even these he would accept with some trepidation. There is the problem of getting competent public servants. And there is the danger of entrenching experts who may develop a rigid bureaucracy. After a careful analysis of the challenging substitutes of the totalitarian sort, Professor Clark concludes that none of these is for us. He suggests modifications of our traditional individualism: development of the "coöperative man," and a further balancing of private interests with those to be sponsored or operated by the state for the public interest. Making progress slowly is, therefore, still his theme. Some "fly swatting" might be done by way of attacking isolated statements of the author; but these are immaterial and to be expected in a work of such general character. The book is one of exceptional value, not to be overlooked by serious students of current affairs.—JOHN DAY LARKIN.

That economics and politics are inextricably intertwined, that consequently judicial ratiocination and economic theorizing must both desist from monothetic interpretations, that the public interest is poorly served by elevating narrowly private policies to the level of statutory prescriptions, are all significantly revealed in Ewald T. Grether's *Price Control under Fair Trade Regulation* (Oxford University Press, pp. 517, $5.00). The book is one with which all social scientists disposed to analyze price or price-fixing problems, all legislators who propose to make laws thereon, all judges who confront the enforcement of such statutes, and all expert advisors on public price policies should be familiar. It is hard reading, because the economic analysis is thorough; but it is profitable reading. Professor Grether first gives the general legal setting in terms of statutes and the decisions of state and federal courts. He then devotes five chapters to a detailed analysis of experience in California, which leads in this type of legislation. He then examines the interests of retailers, wholesalers, and manufacturers, and the effects on consumers. The last three chapters estimate the potential scope of price controls (which is far less than many now think), review enforcement procedures and problems (which are extremely complex and difficult), and discuss the relation between law, economics, and trade regulation. The author treats both vertical resale price maintenance and the less developed horizontal controls. Most interest groups, pro and con, have a highly inadequate understanding of the economic consequences of any given attempt at control; the adoption of control (by law or contract) and its enforcement (by private action or litigation—there is little positive law enforcement) are highly dependent upon effective leadership and organization, and only relatively few trades are susceptible of effective organization. In general: "Throughout the pages of this volume there is abundant evidence that neither the long run interests of the majority of dealers nor the general social welfare is best promoted by the existing vertical and horizontal price regulation statutes" (p. 391). Professor Grether makes constructive proposals. Appendix A (65 pages) gives a state-by-state summary of laws on price control; Appendix B (42 pages) presents informative tables supplementing the analysis in the text.—HARVEY PINNEY.

The second edition of James A Tobey's *Public Health Law* (Commonwealth Fund, pp. xix, 414, $3.50) is more than a revision of his earlier work which appeared in 1926. The earlier volume has been completely rewritten, the present work being more comprehensive. The book is divided into four parts, dealing, respectively, with public health law and administration; powers and duties of health departments; liability of governments, health officers, and individuals in matters affecting public health; and legislation and law enforcement. While emphasis is placed upon the legal powers and duties of health departments and the liability of governments and officers in matters affecting public health, the organization of state and local health departments and the administrative problems of public health programs are also considered. In some cases, the author gets rather far afield from public health law. His chapter on the adoption of health legislation is an explanation of legislative procedure in general, and its inclusion in a book on public health law can be questioned. The same is true of much of the material in his chapter on law enforcement and court procedure. Since books on public health law may be copyrighted, the author has included a section on this subject. Writings on other subjects may also be copyrighted; so this question seems only remotely related to public health law. The book is, however, an excellent piece of work, and should be indispensable to persons engaged in public health work. It will be of interest and value also to lawyers, and to students in the fields of public health, state and local government, and public administration.—CHARLES M. KNEIER.

Research in Public Personnel Administration—Scope and Method (Social Science Research Council, pp. 36, $0.50) is Leonard D. White's latest contribution to the study of public administration. Following a concise summary of the development of public personnel research, the author outlines twenty-two main lines of inquiry along which further research in this field may now proceed. Some of these, such as federal influence upon state personnel standards and methods, social origins of public employees, career opportunities in the public service, public attitudes toward public personnel administration, and personality and group in public work, point the way to the development of new and fruitful areas of research. For each of the main lines of inquiry, the author proposes various hypotheses or questions with which the researcher must deal, indicates alternative methods of analysis, and lists the most important sources of data and information. While much of the proposed research falls wholly within the province of political scientists, there are many studies which can best be conducted by psychologists, statisticians, or administrative technicians, or by collaboration of all these research groups. The brevity of this "memorandum," as Professor White modestly terms it, is certainly no index of its significance. It is recommended to all students of public administration.—Paul T. Stafford.

The United States Senate—What Kind of Body? (Dorrance and Company, pp. 125, $1.50), by Henry Lee Myers, is not a scholarly analysis of the composition and activities of the Senate. The volume contains much that bears no relationship to its title. Almost one-fourth of its pages are autobiographical, relating to the period prior to Mr. Myers' service (1911–23) as a United States senator from Montana. Also included are attacks upon the Roosevelt administration for unbalanced budgets, socialization tendencies, the unsolved unemployment problem, and other matters. Consideration is given to a number of problems rightly included under the above title, such as filibustering, organized minority pressures, congressional blocs, and the burden of membership on many committees; but nothing new is added to our store of knowledge about these problems. The chapter labeled "Conclusion" stresses the good will and good fellowship prevailing in the Senate. Even though Mr. Myers reports that most senators place the matter of reëlection above the welfare of their country, membership is recommended as highly worth while. In his own words, "service in the Senate is bound to be improving to a man, if there is anything in him; if not, he is hopeless."—Christian L. Larsen.

Lyman Bryson is a believer in democracy. His *Which Way America? Communism, Fascism, Democracy* (Macmillan Co., pp. 113, $0.60) is as safe a book as one from the Sunday School library describing Buddhism and Mohammedanism. Those who believe with Winston Churchill that communism and fascism are like the north and south poles—"if you woke up one morning at either, you would not know which it was"—might find this little volume helpful. It is written for the average American reader, and in a bright and readable style expounds the ideologies of which we speak so glibly. Seldom is so much clear thought on subjects of common parlance packed in so small a volume. Russian communism, Italian fascism, and German naziism are described as philosophies and as ways of life. The reasons why they developed in the three European countries are analyzed sympathetically. But the author's main concern is with the average American who must judge whether we should exchange democracy for the current political systems of these states of Europe.—S. GALE LOWRIE.

Research workers, librarians, and others whose activities involve the use of governmental documentary material will welcome the publication of a revised edition of Laurence F. Schmeckebier's *Government Publications and Their Use* (Brookings Institution, pp. xv, 479, $3.00). While the new edition follows closely the plan of the original one as to scope and arrangement, the revision has been carried out with great thoroughness. New matter amounting altogether to some thirty additional pages has been introduced at appropriate points. In addition to correcting a few slight errors and supplying certain minor omissions in the earlier text, the author has noted new series of documentary materials which have appeared since 1936. In particular, the chapters dealing with federal laws, state laws, and administrative regulations and departmental rulings have been amplified by notation of new materials. An excellent index and a list of all depository libraries in the United States contribute to the value of this useful manual.—JOSEPH E. KALLENBACH.

Papers and abstracts of the discussions at the annual national conference of planners appear in *National Conference on Planning; Proceedings of the Conference Held at Boston, Massachusetts, May 15–17, 1939* (Chicago: American Society of Planning Officials, pp. 166, $2.00). Although the whole range of subjects with which the conference was concerned is of relevance to the political scientist, he will find of special interest the discussions of industrial migration, with its effects on government, by Thomas H. Eliot, Carle C. Zimmerman, and others; the analysis of the relationship of land-use planning to local government, by George S. Wehrwein; the thought-provoking paper by Charles Ascher on institutional obstacles to planning in government; and the papers on public-works planning by William S. Parker, Frank W. Herring, F. E. Schmitt, and others.—V. O. KEY, JR.

FOREIGN GOVERNMENT AND POLITICS

The Committee on Social Security of the Social Science Research Council sent Professor C. A. Kulp to Europe to study the coördination of the different social insurances with one another and with relief programs in Germany and Great Britain—countries where problems similar to those found in the United States have received years of attention. It was the hope that a "critical examination of German and British experience would clarify questions which are bound to become important in the United States, and would disclose the possibilities and limitations inherent in coördinating devices and policies that may be suggested to meet them." *Social Insurance Coördination; An Analysis of German and British Organization* (Committee on Social Security, Social Science Research Council, pp. vii, 333, $2.50) is Professor Kulp's very significant report. He has scrutinized historical trends as well as present patterns, looking for both organizational and actuarial-technical aspects of coördination, although paying more attention to the former. This does not mean that the report is concerned chiefly with a description of structural devices or administrative procedures. In fact, the acute analysis would be easier to follow had more space been allowed for such description. (The excellent index and the brief organization outline in the appendix are helpful, but not, in the reviewer's judgment, adequate aids with which to follow the incisive comment and criticism.) It is the larger issues of organization (such as centralization, unification, underlying philosophies, social interest groups conditioning structural arrangements, and broad inter-institutional relations) with which the report deals. It finds that early organization decisions in both countries have become very difficult to change, and have produced a brood of anachronisms that tend to perdure through radical shifts in social circumstances and party domination. Not the least interesting conclusion is the tough resistance of social insurance institutions in Germany, with their deep-seated tradition of self-government, to the totalitarian urges of the Hitler régime. While centralization is the trend in both countries, it is much more pronounced in the British than in the German system. It is to centralization, induced by rising financial costs and pressures and by the desire of higher authorities to improve administrative (chiefly personnel) standards that Kulp chiefly looks for securing better coördination. Part VI contains basic conclusions pointed toward parallel situations in America. Some of the most important judgments, such as the necessity for unification of unemployment insurance and placement functions, have already become realities either by executive action or by changes in the Social Security Act made at the last congressional session. Kulp cautiously declares that "the most German and British experience can do for us is to point out basic issues, provide German and British solutions that may apply to us more or less directly. Direct imports of foreign experience are always suspect; in social insurance, they are often plainly inappropriate if not actually dangerous."—CHARLES MCKINLEY.

In his *Modern Constitutions Since 1787* (Van Nostrand, pp. xii, 539, $5.50), John A. Hawgood, reader in modern history in the University of Birmingham, uses such attractive labels as "Revolutionary Constitutions—the Spontaneous State," "Bonapartist Constitutions—the Prefabricated State," "Legitimist Constitutions—the Condescended State," "Parliamentary Constitutions—the Negotiated State," "National Constitutions—the Mosaic State," "Supranational Constitutions—the Synthetic State," "Libertarian Constitutions—the Expressionist State," "Neo-National Constitutions—the Categorical State." "Modern constitutions" begin with that of the United States and extend, chronologically, to and through the "Russian Alternative" [to "the democratic interpretation"], and the "Italian Alternative," which includes such "variations" as those in Spain, Portugal, Yugoslavia, Germany, and New Deal America. In his use of the term "constitution," Hawgood appears to have in mind a written document, although he prefers those actually put into practice and reserves greatest preference for those with staying power. One may agree with Hawgood that, since the middle of the eighteenth century, the accepted nomenclature of political science does not furnish a satisfactory terminology for the treatment of "constitutions." But one may search in vain through this volume for an analytical discussion as to why, for example, Aristotle's three true and three perverted forms are, as he claims, vitiated by "the permutations and combinations of government today." One can usually learn something from books on "constitutions," but one fails to find fundamentals in this well written volume. The bibliography (pp. 469–525) "is intended as a students', and not as a specialists', bibliography." The author's characterization of his bibliography may be not inappropriately applied by political scientists to the volume itself.—J. G. HEINBERG.

There are so few books of significance in English on Japanese government that a new and understanding study such as *Japan; Government—Politics* (Thomas Nelson and Sons, pp. xiv, 221, $1.70), by the late Robert Karl Reischauer, is particularly welcome, even though, being brief and but lightly documented, it does not purport to give new and erudite information. The first chapter provides a stimulating interpretation of the *leitmotifs* of Japanese political thought, the next two a survey of political evolution prior to the Restoration and the promulgation of the constitution. The present political structure is analyzed in about thirty pages, but its practical operation is further illustrated in the remaining three chapters summarizing political events since 1889. The whole is a more popular and less technical introduction to Japanese affairs than those available in Professor Quigley's *Japanese Government and Politics* or Sterling T. Takeuchi's *War and Diplomacy in the Japanese Empire,* yet is more reliable than recent journalistic accounts. The volume should prove particularly useful for reading in comparative government courses in which but a few days can be given to Japanese affairs. Inevitably, such an abbreviated explanation of Japanese government contains some statements which can easily be questioned; but these do not greatly detract from the book's value as a readable introduction. The volume is attractively made and includes structural charts, a glossary, and a brief but well-selected bibliography. Mrs. Reischauer and Mr. H. M. G. Labatt-Simon are to be congratulated on their able editing of the unfinished manuscript and notes left by Dr. Reischauer.—CHARLES B. FAHS.

In *Municipal Self-Government in Britain* (P. S. King and Son, pp. x, 342, 15s.), G. Montagu Harris has set out to discover the extent of self-government today in practice as well as in law. Excluding London (and with one other exception), he has taken the ten largest cities of Britain, comparing them with each other and with foreign cities in matters of "constitution and structure," council-committee systems, appointed officers, powers, and some of the more important functions, e.g., public assistance, public health, education, "trading undertakings." He has chapters also on "relations with other authorities," "corruption and graft," and "the public." He has drawn his material largely from interviews and conversations with numerous civil servants, city councillors, and other officials, and from information provided by them. He also makes full use of the findings of other scholars, quoting freely from Finer, Hasluck, Jennings, Laski, Maud, Robson, etc., sometimes with approval and sometimes challenging their judgments. His conclusion is that self-government still exists in Britain; Whitehall is not grasping for power; danger for the future comes rather from the financial necessities of the cities and the apathy of the public. He disagrees frankly with some of his contemporaries on the extent to which self-government has been lost through grants-in-aid, administrative control, and statutory restrictions, although he believes some of the latter might well be relaxed. The author digresses from his main theme at times to consider practices bearing on efficient government as well as self-government; but the volume is not intended to be a comprehensive survey of administration. The tone is judicious and free from apparent bias. The argument is persuasive, but not conclusive.—GEORGE A. GRAHAM.

Newfoundland, often called the first British self-governing dominion, and certainly the oldest colony, reverted to the status of a colonial dependency in 1933. This transformation was somewhat like a bankruptcy proceeding. The bondholders foreclosed when the independent proprietor's burden of debt almost led to default. In this case, the local parliament itself voted to abdicate. The government at Westminster appointed a Commission of Government, on which Mr. T. Lodge, the author of *Dictatorship in Newfoundland* (London: Cassell, pp. 273, 7s.6d.) was a member until 1937. Mr. Lodge resigned on account of important disagreements with the Commission and the Imperial Government. He points out that the great bulk of the resources of the island belong to outside owners and that, although taxes and wages have been collected from the newsprint and mineral concerns, the local population has had little control over its all-important activities. Mr. Lodge's book shows how difficult it is to operate a system of responsible government in a colony which is, fundamentally, an economic dependency; more than that, how difficult it is to secure a responsible direction of large-scale economic enterprise with a piecemeal system of local political control, whether by parliament or by commission.—ERIC BEECROFT.

Sir E. D. Simon's *The Smaller Democracies* (London: Gollancz, pp. 191, 6s.) is a brief, chatty, and unpretentious work by a British M.P. who set out, somewhat in the manner of Lord Bryce, to discover how to strengthen the democratic process. The Scandinavian countries and Switzerland are the fields of his inquiry. With a deep concern for preventing the advance of totalitarianism, he discusses the features of each system which seem to provide positive support for democracy; and in doing this he presents a useful selection of information about the achievements of the social services. He argues that the trade unions and coöperatives have been major factors in training for democratic citizenship. He notes the absence of great industrial cities, which, he believes, are obstacles to democratic training in local government. He holds that the "guaranteed" neutrality of these peoples has given them an advantage by releasing them from the urgent necessity for a military spirit and a military expenditure. One of the points stressed by the author is the very close working relationship, amounting almost to a merger of functions, among professors, civil servants, and statesmen, especially in Sweden.—ERIC BEECROFT.

The interconnection of polity and policy is amply illustrated by Norman MacDonald's *Canada, 1763–1841; Immigration and Settlement, the Administration of the Imperial Land Regulations* (Longmans, Green, pp. xii, 577, $8.40). He paints an unflattering and unsympathetic picture of arbitrary land-distribution by irresponsible provincial executives actuated by a desire to reproduce the English social and ecclesiastical hierarchy, relieve the British poor, reward loyalist refugees, and erect a barrier against American republicanism. He is inclined to attribute the retarded economic development of Canada less to the climatic impossibility of raising corn and cotton than to the governmental policy of making gratuitous large-scale land-grants without insisting on their close settlement. He describes this policy as "vicious" and "deplorable," and blames it for some of the unrest which culminated in the rebellion of 1837. By way of contrast, he views American federal policy more favorably than is now customary, and draws no comparison with the various land policies pursued by the older American states.—W. HARDY WICKWAR.

INTERNATIONAL LAW AND RELATIONS

For sixteen consecutive years, the Geneva Institute of International Relations, the oldest and largest English-speaking institute of its type on the Continent, has during one week in August presented a course of lectures by eminent authorities in the international field. These lectures have been published annually in a series under the general title of "Problems of Peace." The volume for 1938, here considered, bears the now anticlimatic title, *War Is Not Inevitable* (Problems of Peace, 13th Series. Peace Book Co., London, pp. 299, 6s.). The manuscripts of the Institute lectures for 1939 are now in process of preparation for publication by the same company. Persons familiar with the notable contributions of the Geneva Institute—in years past participated in by such men as Angell, Brierly, Gooch, Hudson, Laski, Madariaga, Paish, Phelan, Rappard, Rolin, Siegfried, and Zimmern—value these annual volumes as a unique symposium of views. It may be fairly claimed that these lectures by politicians, professors, civil servants, publicists, and officials of the League and the I.L.O. contain materials ordinarily not easily found elsewhere, and constitute valuable commentaries not only on then current developments of certain international problems, but also on various post-war efforts to secure and preserve the peace. The 1938 volume measures up to the high standard set by previous Institutes, with papers by League Under-Secretary-General Frank Walters on the problem of peace as of August, 1938; E. A. Mowrer on the conflict in the Far East; Douglas Reed on central Europe; Ibbetson James on Spain and the Mediterranean; Horace Taylor on the economic effects of *anschluss;* Alexander Werth on French foreign policy; Salvador de Madariaga on Article 16; Andrew Rothstein on the aggressor; Henri Rolin on the smaller European states; E. F. Carritt on the ideological conflict; S. L. Childs on refugees; W. Arnold-Forster on the use of national power; and K. Zilliacus, perhaps better known under the pseudonym "Vigilantes," on the League and the world. It is sincerely to be hoped that the war will not force a discontinuation of the Geneva Institute of International Relations, whose contribution over the years has been of such singular character.—IVAN M. STONE.

The British Year Book of International Law, 1939 (Oxford University Press, pp. vi, 249, $5.50) marks the twentieth year of issue of this admirable annual review. The first of six leading articles in the current issue is a discussion, by C. Wilfred Jenks, of "The Authority in English Courts of Decisions of the Permanent Court of International Justice." Holding that the question of the status in British courts of Permanent Court decisions on questions of public international law "is still an entirely open one," the author submits some interesting and closely reasoned conclusions as to when British courts ought to regard such decisions as binding upon them, and when merely as of persuasive authority. H. C. Gutteridge contributes an article in which he elaborates some of the problems involved in the unification of private law and suggests various improvements in the technique and methods employed by the various organizations interested in that work. Alexander P. Fachiri, under the title "Repudiation of the Optional Clause," examines the circumstances and questions the validity of the withdrawal by Paraguay of her acceptance of that clause, given unconditionally and without time limit. In a brief study of "The Juridical Basis of Hot Pursuit," Glanville L. Williams compares the doctrine of "fresh pursuit" in the common law with the doctrine of "hot pursuit" in international law. In "Some International Law Aspects of the Refugee Question," R. Yewdall Jennings examines the nature and administration of the provisions of conventional law made to provide refugees with travel documents, identity documents, legal status, etc. He concludes that, so far as customary international law is concerned, the willful flooding of other states with destitute refugees is illegal under the doctrine of abuse of rights. Finally, there is an article on "The Abolition of British Capitulatory Rights in the French Zone of Morocco." There are the usual notes referring to topics and events of interest during the year, those on "The 'Contiguous Zone'," "Belligerent Air Attack on Civil Aircraft," and "The Interpretation of International Labor Conventions by the International Labor Office" being of special interest. The decision of the Permanent Court on the Phosphates in Morocco case is analyzed, and there are the usual notes on the decisions of English courts in 1938 involving questions of international law. Similar notes on American cases do not appear in this issue, due to the death of Professor Garner, who had prepared those notes for the *Year Book* for many years. The book reviews, of which there are almost forty, and the reviews of current periodicals are of distinctly high standard.—VALENTINE JOBST III.

Documents on International Affairs, 1937 (Oxford University Press pp. xxvii, 850, $14.00), edited by Stephen Heald, is the eleventh in the series of annual documentary collections published since 1928 under the auspices of the Royal Institute of International Affairs (two volumes having been published for 1935) to accompany and supplement Professor Arnold Toynbee's notable annual *Survey of International Affairs*, which first appeared in 1925. From a collection of 75 documents for 1928, these annual volumes have steadily grown to a collection of more than 350 documents for 1937. Mr. Heald, the secretary of the Information Department of the Royal Institute, began to assist Mr. John W. Wheeler-Bennett in the editing of these volumes in 1931, became joint editor in 1934, was the sole editor of the second volume for 1935 (which dealt exclusively with the Italo-Ethiopian conflict, and which is, incidentally, the best and most complete documentation of that affair in a single volume), and has now taken over the complete editorial responsibility. He maintains the high standard set by Mr. Wheeler-Bennett, and has brought together documents of extraordinary importance, appropriately classified and carefully annotated. The 1937 collection is not complete, however, since documents relating to Spain and Palestine have been omitted in order to take account of developments after 1937 and avoid a piecemeal treatment. These are promised in later volumes, and actually a considerable number of documents dealing with Spanish non-intervention and the Mediterranean are published in the present volume, in view of their close relation to other questions of foreign policy. It is, of course, always difficult to make a selection, and Mr. Heald is to be complimented on his judgment. It may be noted also that in a year which, as the editor remarks, cannot be easily linked with any one or two major events, and which therefore results in a collection somewhat more heterogeneous than for the immediately preceding years, the documents nevertheless suggest clearly as the main problems those of the Mediterranean and the Far East, and the always persistent one of Germany.—CLARENCE A. BERDAHL.

Wladimir D'Ormesson has the deserved reputation of being one of the outstanding commentators on foreign policy in present-day France. In his brilliantly written little volume in the Ambassadors at Large series, entitled *France* (Longmans, Green and Co., pp. xviii, 228, $2.00), Count D'Ormesson gives us a vivid portrayal of the twenty years of French foreign policy since the Treaty of Versailles. Although not entirely unbiased in his presentation, the writer makes a genuine effort at objectivity. He presents a most convincing case for France in her long sustained efforts towards a permanent *rapprochement* with Germany. His analysis of the Hitler régime, while emphasizing its ever-increasing threat to the peace of Europe, does not overlook the mistakes of the Allies which have had such tragic consequences. The author finds the first false step of the peace to have been the failure of the tripartite treaty to guarantee to

France, coupled with the refusal of the United States to enter the League; yet he is inclined to minimize the death blow to the League which Laval struck in 1935. He suspects the Soviet, and his suspicions have been borne out, but his apparent predilection for an entente with Italy is more difficult to understand. He stands up for Chamberlain in his peace efforts, and although conceding that the Munich Agreement was not a triumph for justice, he feels that the peace of Europe was worth heavy sacrifices. His conclusion that the well-being of nations cannot be won either from the clash of empty rivalries or the sanguinary arbitrament of war is sound, even though once again the futile attempt is being made. This readable and timely presentation of the French position is an invaluable aid to understanding the present crisis.—GRAHAM H. STUART.

In his *Développement de l'Organisation internationale*, Pitman B. Potter analyzes and studies the historical evolution of international organization from the Congress of Vienna to the World War. After an introductory chapter dealing with problems of terminology, and of scientific method applicable in social science, the author proceeds with a discussion of elementary forms and types of international relations which provide the foundations upon which international institutions may be erected. As in his earlier work, *An Introduction to the Study of International Organization* (New York, 1922), the author holds that the principal prerequisites for the development of international organization are the coëxistence of a multiplicity of states tending to a condition of equality, which will make them seek international coöperation rather than rely upon individual might for the realization of their aims, and the possession by them of a certain degree of homogeneity. The concluding chapters analyze the nature of the international conference, and the nature and history of international federation as the last form of international organization embraced in the study. All aspects of international organization are analyzed, taking the author into international law, sanctions, administration, and justice. In spite of temporary setbacks recently and the repudiation even of the fundamental ideas of international organization in certain countries, the author sees no reason to suppose that the long and fairly steady development in the direction of more adequate and complete organization in the international field will not continue; for it has its *raison d'être* in normal human needs that must be met unless man is to disappear from the planet.—FRANK M. RUSSELL.

Owing to the paramount importance which the Monroe Doctrine is acquiring in contemporary American foreign policy, the series of studies on Canadian-American relations, planned by Professor Shotwell and now appearing under the auspices of the Carnegie Endowment for International Peace, has an extraordinary timeliness. One of the latest volumes in the historical section of this series, under the editorship of Allan Nevins, is Dr. Lester Burrell Shippee's *Canadian-American Relations, 1849–74* (Yale University Press, pp. xvi, 514, $3.00). Fortunately, the period covered lends itself to specific treatment. In many respects it is the most critical in the relationships of the two countries. The study opens with the annexation movement of 1849–50, provoked by Canadian distress and dissatisfaction owing to the adoption of free trade in Britain and the consequent loss of colonial preferences in British markets. This was counter-balanced by the negotiation of the reciprocity treaty of 1854. Then follows the tense period of the Civil War, and the Fenian raids, together with the less direct effects of British embroilment over the Alabama affair. The perennial fisheries question fills the interstices between other issues. However disappointing to Canada, the Treaty of Washington (1871) establishes a *modus vivendi* regarding the fisheries, and more important, reëstablishes Anglo-American relations upon a satisfactory basis. This and the achievement of confederation in 1867 launch Canada upon a course of distinct national development, yet continued friendly contacts with her great neighbor. Dr. Shippee is to be congratulated upon a thoroughly competent, scholarly, and well-written piece of work, which affords us adequate data regarding this important period in the development of Canadian-American relations.—A. GORDON DEWEY.

Generalizations as to the international rules in regard to insurgents have been many, but the flat assertions in the textbooks have often been unsupported by specific evidence. International lawyers, therefore, owe a genuine debt to Dr. Haig Silvanie, who, in his *Responsibility of States for Acts of Unsuccessful Insurgent Governments* (Columbia University Press, pp. 219, $2.75), has contributed heavily to the understanding of an obscure subject. The reports of claims commissions have provided his main source material, and into them he has delved to show that insurgent governments can bind the state to an extent not usually assumed in the past. As the author says in his preface, "during the recent Mexican arbitrations . . . state liability for acts of unsuccessful insurgent governments was extended to include not only taxes and customs duties but also certain categories of contractual and tortious acts." The new doctrine makes the state responsible for all loans and contracts of a governmental routine nature and disallows only those acts which were made in aid of the rebellion. In other words, insurgents, though unrecognized, are often regarded for many purposes as agents of the state. Dr. Silvanie is to be commended for his clarity of both style and thought. He has gone through a great collection of frequently confusing and apparently contradictory cases and has emerged with conclusions that are as clear as they are sound. This is a splendid monograph.—PAYSON S. WILD.

Japan's Aggression and Public Opinion (Kumming, China: National Southwest Associated University Library, pp. vii, 498) is a compilation of fifty-seven articles by reputable American, British, and German journalists, publicists, and professors. The articles are classified under nine titles, of which six deal with Sino-Japanese relations and aspects of conditions within China and Japan, one with possible international action, one with the position of the United States, and one with the British position. The compiler is Mr. T. L. Yuan, co-director of the National Library, Peiping. Articles are taken from periodicals of high standing, and are informative and reasoned rather than propagandist. The weight of their conclusions, which is favorable to the cause of China, is the more impressive for this deference to intelligence. The collection is of considerable value also for the review of events and policies embodied in the articles, and for significant items of information hitherto widely scattered in the thirty publications drawn upon.—HAROLD S. QUIGLEY.

M. Walter Schiffer, one of the associates of the Geneva Research Center, has recently published a brief but interesting exegetic study of the sanctions article of the Covenant. This monograph, entitled *L'Article 16 du Pacte de la Société des Nations; son interprétation à la lumière de sa genèse* (Geneva, pp. 69) is an attempt to clear up some of the ambiguities and uncertainties concerning the proper interpretation of Article 16 by examining relevant statements of those most responsible for the framing of that portion of the Covenant. Although the work has been competently done in every detail, the result, as might have been anticipated, is not overly fruitful; for the framers were not too clear concerning the exact circumstances under which the article would be invoked, and still less concerning its presumptive effectiveness. The author concludes, somewhat sadly, that since military force was necessary for the successful application of coercive pressure, the discretion given to member states in this respect was an element of weakness so important that it should have been foreseen with greater clarity.—GRAYSON L. KIRK.

POLITICAL THEORY AND MISCELLANEOUS

Many political scientists will welcome the schematic clarity of *Frustration and Aggression* (Yale University Press, pp. viii, 209, $2.00), by John Dollard and others. Several specialists on the staff of the Institute of Human Relations at Yale have undertaken to state what they conceive to be one of the fundamental laws of human behavior, and to demonstrate that it concisely sums up observations which have been made by many different students of several aspects of social life. The basic proposition is that "aggression is always a consequence of frustration." No political scientist will conceal from himself that one of his tasks is to understand aggression. A theory of aggression is indispensable to a theory of war and revolution, to say nothing of less dramatic political events. This book will provide a terse set of definitions and hypotheses for the systematic analyst of politics. No doubt the political scientist will look at Chapter VII, which has to do with "Democracy, Fascism, and Communism." Some members of the profession will be over-critical of the shortcomings of this chapter. The impression of thinness is inseparable from the mode of treatment which has been adopted. The general proposition of the book is repeated, then elaborated and illustrated. Despite the utility of the categories, the illustrations seem scattered; and the treatment lacks the rich texture of some of the better books on the subject. Key words like "frustration" and "aggression" are not brought into sufficiently close relationship to the data with which the historian or political scientist is accustomed to work. The criteria shift from paragraph to paragraph. Are we to treat every change in the value position of a group as a "frustration"? Is a group frustrated when it receives less income? Even if it did not expect to get more? And how are we to measure the prevalence of this attitude in the group? I raise these questions because there is an elaborate task of "intermediate definition" to be done before generalizations and historical detail can become part of the same universe of discourse. The key terms, like "frustration," are ambiguous. They must be supplemented by indices of growing explicitness. The problems encountered by the authors in Chapter VII are typical of those which appear when the "chasm" between "theory" and "fact" is to be bridged.—HAROLD D. LASSWELL.

L. L. Bernard's *Social Control in its Sociological Aspects* (Macmillan Co., pp. ix, 711, $4.00), says its author, represents an attempt to combine in one book the advantages of a text-book and a case-book. Less respectful readers may apply to it the more opprobrious term "book of readings," but it is much more than that. The author presents each subject which he treats with a brief discussion, follows with an extended quotation of source material, and concludes each chapter with a discussion of his own. He sometimes fails to synthesize his material adequately, but his presentation is stimulating. The source material is so excellently chosen that the reader is left with a vivid impression of each problem. The social controls are divided into two groups, exploitive and constructive, a classification which is rather unique, but not necessarily inappropriate. The author's hostility to the clergy, his emphasis on their use of fraud, and his assertion that religious controls are not greatly concerned with social welfare, is perhaps a little harsh, particularly since he would replace them with a new sacerdotal class of social scientists. He is convinced that his priesthood of professors will bring salvation to a sinful world. The view that men of modern times are abandoning the most objectionable forms of control, which is expressed at the end of many chapters, may cause some lifting of eyebrows in this Machiavellian age. The student of public opinion will find the treatment of propaganda disappointing and rather loosely hung together, but he will profit from the larger pattern of the discussion, which shows the part played by various devices such as intimidation, fraud, advertising, and regimentation in the development of public opinion. The relation of force to manipulative techniques is brought out more satisfactorily than in any other text-book. The author's suggestion that education operates indirectly as a social control, except when it degenerates into propaganda, is a sound one. The purpose of education, he says, is to acquaint the child and the citizen with socially useful facts and principles, and instruct him in the art of finding other facts. His own book will contribute to this kind of education.—CHARLES W. SMITH, JR.

In recent years, innumerable volumes have been written on the revolution in political and legal theory that has taken place in Germany since 1933. One of the most profound analyses as yet to appear is Professor Roger Bonnard's *Le droit et l'état dans la doctrine nationale socialiste* (Paris: Librairie Général de Droit et de Jurisprudence, deuxième édition, pp. 304). In this volume, a revision and expansion of a work originally published in 1936, Professor Bonnard undertakes a systematic presentation of the doctrine of law and the state elaborated by National Socialist publicists. The elements of the new theory are discussed under four principal headings: *Volksgemeinschaft*, *Führung*, *Party*, and *State*. In the first section, there is a particularly able analysis of the National Socialist concept of the community as a racial organism. The nature, functions, and powers of the Führer, the character and authority of the state, and the position of the party are also given adequate treatment, although Professor Bonnard sometimes fails to indicate important points of dispute among German writers. Occasionally the analysis seems to rely too heavily upon the extremist views of Reinhard Höhn and his school, and the rich field of judicial decision has been almost entirely neglected. The reader may regret also that no inquiry is made into the relationship between legal theory and practice in the Third Reich. But within the limits he has set for himself, Professor Bonnard has produced an admirable treatise. It is to be recommended to all students of National Socialism.—ALFRED V. BOERNER.

Edward Corbyn Obert Beatty's *William Penn as a Social Philosopher* (Columbia University Press, pp. xiii, 306, $3.50) is a detailed and scholarly description of the political, economic, and social ideas of one of the important figures of the late seventeenth and early eighteenth centuries.

The book is not a biography, nor is it a history of the period, but, as the author says, "purely an excursion into the history of social philosophy." As such, it shows careful, competent scholarship and a close acquaintance with the manuscript letters and papers of Penn as well as with the printed sources. A useful bibliography of some fourteen pages is included at the end of the volume, and the index is adequate. The book, however, is neither very stimulating nor very exciting. This is due partly to the uninteresting style and partly to the fact that too many of those things that might have made the book most significant are left to the imagination of the reader. There is little or no consideration of Penn's significance or position in the history of political, economic, or social theory; only scanty attention is given to the influences at work in the formation of Penn's theories; too limited space is devoted to the effect of Penn and his ideas upon the development of American institutions; and practically no effort is made to analyze or evaluate the ideas described. In fairness to Professor Beatty, it should be added, perhaps, that he evidently intended the book to be primarily descriptive. But the "Epilogue," as well as a few passages in earlier chapters, makes it evident that Professor Beatty has something more to contribute. One can only hope that he will do a sequel to his descriptive study.—E. M. KIRKPATRICK.

The Chinese Year Book, 1938–39 Issue (Shanghai: The Commercial Press, pp. xii, 754, $12.00) marks the fourth year of publication of this compendium prepared from official sources by the Council of International Affairs in Chungking. It offers a wide assortment of descriptive material, statistics, and other data pertaining not only to the area of China under the rule of the Kuomintang, but also to the provinces occupied by Japanese armies. Almost every page gives evidence of the terrific impact of the Japanese invasion upon Chinese civilization. The articles on Mongolia and Tibet by Kong Chin-tsong are particularly helpful. Other significant contributions are articles on the Sino-Japanese hostilities, the puppet governments established by the Japanese in the conquered provinces, the organization of the Kuomintang, the reform of the National Government, the National Military Council, mass mobilization and training, war finance and war economy, communications and transportation, education, public health, the problem of refugees and their relief, the effect of the war on the civil population, Chinese youth in the war, and the war-time press. Much of the information is not available in other English sources. The Romanized spelling of proper names is followed by the Chinese characters in parentheses.—KENNETH COLEGROVE.

"Frontiers of Legal Aid Work" (*Annals of the American Academy of Political and Social Science,* Vol. 205, $2.00) is a collection of twenty-one articles under the editorship of John S. Bradway. The contributors "are twenty-one frontiersmen in the sense that most of them have pioneered at desks in the offices of legal aid societies." In the list of contributors one finds a member, the secretary, and a vice-president of the National Association of Legal Aid Organizations; staff attorneys for legal aid societies in New York City, Boston, Minneapolis, Pittsburgh, Chicago, Cincinnati, and Cleveland; the president of the Legal Aid Society of Denver; a former social worker for the Legal Aid Society of San Francisco; a municipal court judge of the District of Columbia who has served as judge of the Small Claims and Conciliation Court recently established in the District; as well as many prominent attorneys who have been long associated with the legal aid work of county, city, or state bar associations, or of the American Bar Association. The twenty-one articles are grouped into four categories, namely, Introduction (two), Legal Aid Technique (seven), Structure of Legal Aid Organizations (seven), and An Objective View of Legal Aid Work (five). The titles, "Legal Aid and the Promotion of Justice," "Legal Aid Service to Injured Workmen," "Legal Aid as a Part of a Community Program," "Interest of the American Bar Association in Legal Aid Work," respectively illustrate the type of material found in each category. In the opinion of the reviewer, the volume accomplishes the purpose for which it was designed, that is, "to show the progress made and the type of problems with which the organized legal aid movement is now engaged."—P. S. SIKES.

In *A Critique of Russian Statistics* (Macmillan and Co., Ltd., pp. 76), Colin Clark sets forth as the purpose of his investigation the collation and testing of Russian statistics by means of tests "of internal consistency and by comparison with statistics of the external world." The author then proceeds to analyze the changes which have taken place in the per capita real income of Russia during the last thirty years. While the conclusions are not encouraging for the Bolshevik manner of economic planning, the author admits that the income per head of the working population as a whole rose by as much as forty-two per cent between 1934 and 1937.—B. W. MAXWELL.

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AMERICAN GOVERNMENT AND PUBLIC LAW

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Law Library, Columbia University

AMERICAN

UNITED STATES

The Reorganization Act of 1939 and the President's Reorganization Plans in pursuance of it are beginning to make themselves felt in the field of documents. The following agencies, some new and some in new departments for them, have recently issued publications for the first time under their new set-up:
Biological survey bureau (Interior department); Bituminous coal division (Interior department); Federal home loan bank board (Federal loan agency); Federal works agency; Government reports office (President of the United States); Housing authority (Federal works agency); Press intelligence office (Government reports office); Public roads administration (Federal works agency); Public works administration (Federal works agency); Rural electrification administration (Agriculture department); and Social security board (Federal security agency).

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This means that the Treaty Information bulletin and the Press Releases pamphlet will be discontinued. The subscription rate for the new publication is 10 cents per copy, or $2.75 a year.

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